

SEP 17 2026

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

RECEIVED

In re: Janette Martinez,

Complaint No.: 26-146

Respondent.

ADVOCATE'S RECOMMENDATION

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

RESPONDENT/COMPLAINANT

Respondent, Janette Martinez, serves as a City Commissioner of Kissimmee, Florida. Complainant is Madelin Casiano 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) and Section 112.3143(3)(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 August 6, 2026. The Supplemental Report of Investigation was released on September 2, 2026.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.313(7)(a), Florida Statutes, by having a conflicting contractual relationship.

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 is managed by a City Manager and governed by a five-member City Commission consisting of the Mayor, Vice-Mayor, Mayor Pro Tempore, and two Commissioners. (ROI 4) Respondent serves as one of the Commissioners. (ROI 4)

Respondent and Lisandra Roman have been friends for 20 years. (ROI 32, 41) After Respondent was evicted from her residence, Roman rented a house located at 1606 Sunny Street for \$2,100/monthly to Respondent for approximately a year, from March 2025 through March 2026. (ROI 38, SROI 10, SROI Exhibit C) This was Roman's first time renting the house to anyone and she has not rented it since. (ROI 12)

In addition, Roman owns the restaurant "Lechonera El Jibarito," which operates daily and is located at 1985 S. John Young Parkway (property). (ROI 32, 41) Respondent owns a food truck named, "Coqui Kitchen," which is only used for special events. (ROI 42-43, Exhibit G)

Complainant maintains Respondent and Roman have a business connection because on September 27, 2025, Respondent promoted a mobile "food truck" activity at the property on her personal Facebook page, by stating: "Now arriving at the Food Truck Spot @ El Jibarito, Coqui Kitchen." (ROI 6, Complaint pg. 31) Respondent and Roman advised that the post was intended solely to attract customers to Roman's husband's mobile food truck business, Willian's Burger, (ROI 32, 41) Respondent parked her own mobile food truck on the property only to draw in

patrons, not operate. (ROI 35, 43) Contrary to Complainant's allegation, neither has a financial interest in the other's business. (ROI 32, 41)

Roman and Respondent advised that the only other time Respondent's mobile food truck was on her property was on September 5, 2024, when the Florida Department of Business & Professional Regulations (DBPR) conducted a routine inspection. (ROI 36, 44) Respondent paid Roman \$150.00 to cover the required commissary services, including dumping gray water, refilling with clean water, disposing of old grease and debris, and cleaning associated with the inspection. (ROI 37, 44) Respondent advised that she parked her food truck on the property to accommodate DBPR's routine inspection, as DBPR does not conduct inspections at a residence. (ROI 44)

Complainant advised that Roman sought a Conditional Use Permit (CUP) from the City to allow mobile food trucks, including Coqui Kitchen, to sell food on the property.¹ (ROI 2) It appears seeking the CUP started around December 2024. (Complaint pgs. 9-10) The project name for the CUP file is "The food truck spot @ Lechonera El Jibarito," which indicates that the business is seeking the permit approval. (SROI 6, SROI Exhibit A5)

Complainant maintains that Roman's zoning designation did not permit mobile food truck businesses to operate permanently or semi-permanently; that a temporary permit authorizes only short-term, time-limited activities and cannot lawfully be converted into a permanent land-use entitlement; and that special arrangements appeared to have been made for Roman because of Respondent's position. (ROI 17) On January 9, 2026, Roman obtained a Conditional Use "Special

¹ In addition, Complainant alleges that an online records search of the Florida Department of State, Division of Corporations, indicates that Respondent and Roman share an interest in Building Tiny Hearts Corp, an active Florida not-for-profit corporation. (ROI 18) However, Roman advised that she agreed to serve as Secretary for the Corporation because Respondent's daughter, Janiris M. Forty Martinez, asked her to join the organization, which remains active, but has not yet begun operations. (ROI 39)

Events with Sales Permit" (SEP), CU-25-0004, issued by the Development Review Committee (DRC), authorizing mobile "food trucks" to operate on the property. (ROI 10, (Complaint pgs. 11-13) City Manager Mike Steigerwald filed an appeal regarding Roman's permit, which came before the City Commission on January 20, 2026. (ROI 2, Exhibit K)

Complainant alleges that Respondent was involved in the permitting process, that her involvement and support for Roman were improper, and that the application improperly relied on a previously issued permit to justify granting a permanent SEP authorizing mobile food trucks on the property. (ROI 7-9, 11) Complainant advised that Respondent's involvement included attending an August 2025 DRC/Planning Advisory Board (PAB) pre-application meeting and that she was routinely included on emails from staff to Roman and to members of Development Services. (ROI 12) Complainant believes that this conduct raised concerns among staff regarding Respondent's influence. (ROI 12)

City Development Services Director Craig Holland advised that, as a courtesy, he included Respondent on several emails related to Roman's request. (ROI 19) He advised that Respondent neither initiated nor responded to any emails from him or his staff to Roman regarding the permitting process. (ROI 19) He further advised that Respondent never asked him or his staff to be included in any correspondence and that he added Respondent because she indicated she was curious about how the permitting process works. (ROI 19)

Holland confirmed that Respondent attended the Development Review Committee (DRC) meeting on August 20, 2025 where Roman's permit application was discussed. (ROI 20) He also confirmed that Respondent's presence at the DRC meeting made staff uncomfortable because Commissioners do not routinely attend Planning Advisory Board (PAB) or DRC meetings. (ROI 20) However, he maintained that her attendance did not alter staff's handling of Roman's

application, affect staff's recommendations to the PAB or DRC, or result in any outcome other than what is foreseen under City code. (ROI 20) He advised that Respondent exerted no influence, directly or indirectly, during Roman's permitting process, and maintained that he and his staff neither deviated from the permitting process nor failed to apply all rules and regulations outlined in the City's codes and ordinances. (ROI 21)

Development Services Senior Planner Cristian Arias confirmed that Respondent only observed the meeting and did not ask any staff members any questions or speak to any staff members about permit request CU-25-0004. (ROI 24) Arias maintains that he never spoke with Respondent during the permitting process and that he has no knowledge of her interfering in the process or attempting to influence him or any members of the Planning Services Department. (ROI 25) He maintains that all rules, regulations, and procedures were followed when approving Roman's permit on August 20, 2025. (ROI 25)

Development Services Senior Planner Ryan Altizer confirmed that Respondent observed the meeting and never asked staff members any questions or spoke to any staff members regarding the discussion and approval of Roman's permit. (ROI 27) Altizer advised he had never spoke with Respondent regarding the application that he has no knowledge of her interfering in the process or attempting to influence him or any members of the Planning Services Department. (ROI 28) He maintains that all rules, regulations, and procedures were followed. (ROI 28)

Planning & Zoning Manager Brenda Ryan facilitates PAB meetings, reviews permit applications, and recommends to the City Boards whether to approve or deny applications to ensure compliance with City regulations. (ROI 29) Ryan confirmed that Respondent did not ask any questions or speak with them about Roman's permit. (ROI 30) Ryan advised that she never spoke with Respondent about the application and she has no knowledge of Respondent interfering

in the process or attempting to influence any PAB members. (ROI 31) She maintains that all rules, regulations, and procedures were followed. (ROI 31)

Roman advised that it was she, not Respondent, who inquired at the City's Planning Services office about a mobile food truck permit to operate on her property so that her husband could operate his mobile food truck business, Willian's Burgers, after hours and during special events. (ROI 33) Roman advised that she speaks fluent Spanish, not English, and sometimes requires assistance because of the language barrier which led to Holland arranging for Arias to explain the permitting process to enable her to complete the online application. (ROI 34)

Respondent advised that Roman is a friend and also a constituent so she contacted City Manager Steigerwald and Holland to advocate on Roman's behalf, requesting a meeting and guidance so that Roman could follow City procedures for obtaining a mobile food truck permit on behalf of Respondent's husband. (ROI 33, 45) Both Respondent and Roman were unaware of the City's permitting process. (ROI 45)

Respondent acknowledged attending the DRC meeting held on August 20, 2025. (ROI 49) She advised that she never intended her presence at the meeting to make staff feel uncomfortable, but she was curious about how the process worked and that her attendance was not meant to influence staffs handling of Roman's application or affect staff's recommendations to the Board. (ROI 49) She maintains that she exerted no influence, directly or indirectly, as a Commissioner concerning this matter. (ROI 49)

There are two analyses.² The contractual relationship must exist simultaneously with the other elements of the statute for a violation to be present. See CEO 12-3.

² Compliance with the voting conflicts law (Section 112.3143, Florida Statutes), which would include abstention from voting or participation in matters does not obviate or negate the conflict under Section 112.313(7)(a). See CEO 94-5, 11-6.

In the first analysis, regarding a contractual relationship when Respondent paid Roman \$150 to rent a space for the DBPR inspection, this act occurred prior to the permitting process which means the possible contractual relationship did not occur simultaneously with the other elements of the statute.

Regarding a contractual relationship when Respondent was renting the house from Roman, this occurred during the permitting process. In this matter, an appeal of a DCR permitting decision goes before the City Commission. As such, an entity that receives a permit is subject to the regulation of the City Commission. See CEO 10-23 Question 3.

However, the entity seeking a permit in the instant matter is Lechonera El Jibarito not Roman. Roman is the individual who rented to Respondent. Thus, Respondent contractual relationship is with Roman, not Lechonera El Jibarito which is the entity subject to the regulation of the City Commission. See CEO 8-12 Question 3. Thus, there is insufficient evidence of a violation.

In the second analysis, regarding both contractual relationships, there is insufficient evidence of a violation.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.3143(3)(a), Florida Statutes, by failing to properly disclose the nature of her conflict when she abstained from a vote.

APPLICABLE LAW

Section 112.3143(3)(a), Florida Statutes, provides as follows:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure 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 he or she 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(2); 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(1)(d), Florida Statutes, defines special private gain or loss as follows:

“Special private gain or loss” means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

In order to establish a violation of Section 112.3143(3)(a), Florida Statutes, the following elements must be proved:

1. Respondent must have been a county, municipal or other local public officer serving on a collegial body.

2(a). Respondent must have:

1) voted in his or her official capacity on a measure which would have inured to the Respondent's own special private gain or loss,

or

2) voted in his or her official capacity on a measure which the Respondent knew would have inured to the special private gain or loss of a principal by whom the Respondent was retained or to the parent organization or subsidiary of a corporate principal by which the Respondent was retained,

or

3) voted in his or her official capacity on a measure which the Respondent knew would have inured to the special private gain or loss of a relative or business associate of the Respondent.

OR

(B). When abstaining from a vote because of a conflict, the Respondent, prior to the vote being taken, must have failed to publicly state to the assembly the nature of his or her interest in the measure described in paragraph 2(A), above.

OR

(C). After abstaining from a vote because of a conflict, the Respondent failed to disclose the nature of his or her interest in the measure described in paragraph 2(A), above, as a public record in a memorandum filed within 15 days after the vote occurred with the person responsible for recording the minutes of the meeting at which the vote occurred.

ANALYSIS

The underlying facts and circumstances relating to this allegation are contained above in Allegation One. As noted above, the City Manager Steigerwald filed an appeal regarding Roman's permit, which came before the City Commission on January 20, 2026. (ROI 2, Exhibit K) The

appeal challenged the DRC's decision on January 9, 2026, to renew the SEP, CU-25-0004 issued on September 9, 2025 which allowed food trucks to operate at 1985 S. John Young Parkway. (ROI 52, Exhibit L)

Respondent advised that prior to the City Commission's January 20, 2026 meeting, she sought legal advice from then-City Attorney Olga Mercedes Sanchez de Fuentes regarding her need to recuse herself from voting on the matter because she operates a food truck, Coqui Kitchen, and planned to place it at 1985 S. John Young Parkway. (ROI 55) Sanchez de Fuentes called the Florida Commission on Ethics (COE) and spoke with the on-call attorney, Stephanie Novenario, who opined that if the approval of the permit (CU-25-0004) would allow Respondent to place her food truck on the site, it would constitute a personal benefit to Respondent. (ROI 56) Therefore, she should abstain from voting on the matter and complete a CE Form 8B, "Memorandum of Voting Conflict." (ROI 56, 62-63)

It is alleged that Respondent recused herself from the vote and completed a CE Form 8B but did not publicly state the basis for her voting conflict nor did she accurately complete the form. (ROI 2, Exhibit N) The CE Form 8B's instructions provide that in addition to abstaining from a vote wherein a public official has a conflict, the public official is required to publicly announce the nature of the conflict and complete the form which includes the written disclosure of the nature of the conflict. (ROI 58)

Respondent believed she completed it correctly and turned it over to the City Clerk before the Commission meeting began. (ROI 57) As the mayor addressed the relevant agenda item, Respondent publicly stated, "I am going to be recusing myself from voting on this item. I've already signed the form [CE Form 8B]. I've got legal Counsel from our City Attorney [Sanchez de Fuentes] and provided the document to our City Clerk." (ROI 57) The meeting recording

reflect that Respondent failed to publicly disclose the nature of her interest in the matter before the discussion of the appeal regarding “food trucks” at 1985 S. John Young Parkway began. (ROI 60) In addition, a review of the CE Form 8B indicates that Respondent noted that the matter she abstained from inured to her special gain or loss but failed to disclose the nature of her conflict of interest regarding the measure under consideration. (ROI 59, Exhibit N)

Respondent advised that Sanchez de Fuentes failed to specifically instruct her to include the reason for the conflict in the CE Form 8B narrative section or announce the reason publicly. (ROI 61) She maintains “everyone” clearly knew that she and Roman are best friends. (ROI 61)

Sanchez de Fuentes opined that as a public official, even if her instructions were unclear, Respondent should have known better and read the instructions when completing CE Form 8B. (ROI 64) Regarding the Respondent’s failure to publicly announce her abstention, Sanchez de Fuentes advised that she was not fully focused when speaking to Respondent as she was preoccupied with the risk of termination. (ROI 65) She advised that she should have interjected to instruct Respondent to publicly state her reason for abstaining. (ROI 65)

Respondent announced her abstention and filed a CE Form 8B; however, she failed to properly announce and publish the nature of her conflict pursuant to the Commission on-call Attorney’s recommendation to abstain. While there is sufficient evidence to prove a violation, it does appear that further pursuit of this matter is in the best interest of the public.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3143(3)(a), Florida Statutes, but take no further action.

RECOMMENDATION

It is my recommendation that:

1. There is no probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes, by having a conflicting contractual relationship.
2. There is probable cause to believe that Respondent violated Section 112.3143(3)(a), Florida Statutes, by failing to properly disclose the nature of her conflict when she abstained from a vote, but that the Commission take no further action.

Respectfully submitted this 17th day of September, 2026.


MELODY A. HADLEY
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on Ethics
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CEO 12-03 – February 8, 2012

**CONFLICT OF INTEREST; EMPLOYEES HOLDING OFFICE; VOTING CONFLICT;
POST-PUBLIC-OFFICEHOLDING RESTRICTIONS**

**SCHOOL BOARD MEMBER APPLYING DURING BOARD TERM
FOR PUBLIC EDUCATION FOUNDATION POSITION
TO COMMENCE AFTER LEAVING SCHOOL BOARD**

To: *Beverly Morris, Esquire, Ocala*

SUMMARY:

Neither Section 112.313(7)(a), nor Section 112.313(10), nor Section 112.313(14), Florida Statutes, would prohibit a District School Board member from applying for employment with a foundation directly supporting the District; from assuming the position after she leaves the School Board; or from "representing" the foundation before the Board/District within two years of leaving the Board. However, the member must comply with Section 112.3143(3)(a), Florida Statutes, regarding Board votes/measures concerning her applying for the position. CEOs 11-23, 08-14, and 88-11 are referenced.¹

QUESTION 1:

Would a prohibited conflict of interest be created were a School Board member to apply for employment with the School Board to serve a School Board foundation, with the employment to begin after the member's School Board term expires, and were the member to represent the foundation before the School Board/District within two years of leaving the Board?

Under the circumstances presented, Question 1 is answered in the negative.

In your letter of inquiry and additional information provided to our staff, you ask whether the Code of Ethics (Part III, Chapter 112, Florida Statutes) would prohibit Judi Zanetti, a member of the District School Board of Marion County, from applying for a compensated position as foundation officer of a public education foundation (a nonprofit direct support organization for the District); from beginning the position, if hired, after leaving the School Board; or from "representing" the foundation before the School Board/District within two years of vacating her Board seat. Further, you emphasize that if the Board member is selected for the position, her employment would begin after the end of her current (and final) term as a School Board member.

Additionally, you state that the foundation is authorized to operate as a direct support organization for the benefit of the District; that the opening for the position the member would seek is posted and available to all School Board employees and the public; and that the position is compensated directly by the School Board. Further, according to the posted job description you have provided, the work of the position is to supervise the foundation in organizing and developing a volunteer network to raise funds and enhance education, and the position is under the supervision of the elected Superintendent of Schools. Also, among the duties of the position are: coordinating foundation planning, development and policy with the foundation's board of directors; soliciting private support; interfacing with the foundation board of directors and School Board personnel; managing fiscal responsibilities of private grants awarded to the District; reporting to the Internal Revenue Service on behalf of the foundation; working with the business community to increase student and teacher quality; and writing news releases for the foundation.

You state that the selection process for the position would begin with interviews by a committee consisting of foundation volunteers, followed by the committee's recommending a candidate for the position, with the committee's recommendation then subject to approval of the Superintendent. Further, you relate that the School Board would vote to approve or disapprove the Superintendent's recommendation. And, you state that the

member would abstain from the relevant School Board discussions; abstain from the Board's approval vote; and complete the appropriate voting conflict memorandum (CE Form 8B).

The Code of Ethics for Public Officers and Employees provides, in relevant part:

EMPLOYEES HOLDING OFFICE.—No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council, commission, or authority, by whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer. [Section 112.313(10)(a), Florida Statutes.]

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—No public officer . . . 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 any 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.]

LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION -- A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. . . . [Section 112.313(14), Florida Statutes.]

For purposes of this subsection: . . .

(e) The "government body or agency" of an elected school district officer is the school district. [Section 112.313(14)(e), Florida Statutes.]

Section 112.313(10)(a) prohibits a public employee from holding office on a board that is, at the same time, his or her employer. However, because the member's holding of the foundation position, if she achieves it, would not overlap in time with her service on the School Board, we find that her application for and placement in the position would not be prohibited by Section 112.313(10).²

Similarly, in order for Section 112.313(7)(a) to potentially prohibit the member's holding employment in the position, her employment would have to overlap in time with her School Board service. See CEO 08-14 and CEO 88-11. However, under the facts presented, the member, if selected for the position, would no longer be a member of the School Board at the time she begins employment as foundation officer. Thus, we find that the employment would present no prohibited conflict of interest for the member under Section 112.313(7)(a).

Section 112.313(14) is implicated to the extent that the foundation officer would represent the foundation before the Board or District. However, Section 112.316, Florida Statutes, provides:

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

Because the foundation exists solely to support the District, any request the foundation officer would make to the Board/District on behalf of the foundation would serve a unified goal of supporting the local public schools. Thus, we find that a unity of interest under Section 112.316, Florida Statutes, would negate a harsh, mechanical application of Section 112.313(14). See CEO 11-23.

Question 1 is answered accordingly.

QUESTION 2:

Would the member be prohibited by Section 112.3143(3)(a), Florida Statutes, from voting on the School Superintendent's recommendation for the foundation officer position?

Question 2 is answered in the affirmative.

Section 112.3143(3)(a) provides in relevant part:

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 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.

As the School Board's vote on the Superintendent's recommendation for the foundation officer position could have the effect of selecting the member for the position or eliminating her from consideration, we find that she would be required to abstain from the vote. We note that the member has already advised that she does not intend to vote on, or participate in discussion of, the measure. Further, the member will be required to publicly state to the Board the nature of her interest in any measure(s) concerning the position, and, within 15 days after the relevant vote(s), to file a memorandum (CE Form 8B) disclosing the nature of her interest in the relevant vote(s)/measure(s).

Question 2 is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on February 3, 2012 and **RENDERED** this 8th day of February, 2012.

Robert J. Sniffen, *Chairman*

^[1]Prior opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us).

^[2]We emphasize that, under Section 112.313(10), the member must not become a District/Board employee until after she vacates her Board seat. In other words, even if the "approval" vote by the Board occurs during the member's term, the effective date of employment must be after her term ends.

CEO 10-24 – December 8, 2010

**CITY ECONOMIC DEVELOPMENT COMMISSION MEMBER PARTNER
IN LAW FIRM WITH CLIENTS INTERACTING WITH COMMISSION**

To: Jon Phillips, Ethics Counsel, City of Jacksonville

SUMMARY:

A person who is an attorney in a law firm would not have a prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, were he to become a member of a city's economic development commission, provided that his firm does not work on a client's application for an incentive from the commission; a prohibited conflict under Section 112.313(7)(a) would not be created were a client of the firm to apply to a subordinate board of the commission for a permit, provided a denial of the application by the subordinate board is not appealed to the commission and provided that the firm does not work on the permit application to the subordinate board; and a prohibited conflict would not be created were a client to apply to the subordinate board for a zoning waiver or variance, provided the firm does not work on the waiver/variance matter for the client. In addition, we find that the commission is not an "advisory board" for purposes of Section 112.313(12), Florida Statutes. Also, the member must comply with Section 112.3143, Florida Statutes (the voting conflicts law), regarding votes/measures/matters of the commission concerning himself, his firm, his firm's clients, and certain others, whether or not his firm works on the matter for the client. CEO 74-8, CEO 77-178, CEO 79-82, CEO 80-79, CEO 86-13, CEO 86-24, CEO 96-1, CEO 03-7, CEO 04-6, CEO 06-24, CEO 07-11, CEO 08-1, CEO 08-11, and CEO 10-20 are referenced, and CEO 87-60, CEO 89-29, and CEO 07-13 are distinguished.¹

QUESTION 1:

Would a prohibited conflict of interest be created were a client of a law firm of a member of a city's economic development commission to apply to the commission for or receive from the commission a waiver of part of the client's property taxes or other similar economic incentive?

Question 1 is answered in the negative, unless the firm provides work for the client regarding the incentive application.

By your letter of inquiry and additional information subsequently provided to our staff, we are advised that George Gabel (member) is considered to be a well-suited, possible appointment to the Jacksonville Economic Development Commission (JEDC), due to his partnership in a large, interstate, international law firm and other affiliations.² Further, we are advised that the JEDC is the economic development agency and the community redevelopment agency (CRA) for the City³ and that its primary objectives are to recruit and expand higher-wage opportunities, to increase the growth and expansion of small businesses, to promote private capital investment in the City, to promote and leverage investment in economically-distressed areas, and to promote a healthy and vibrant downtown.⁴

Also, we are advised that one of the law firm's clients is a large, publicly-traded corporation, important to the City's overall economic health, which in the past applied for JEDC-related "incentives," such as a waiver of part of the corporation's property taxes for some portion of its property. Such a tax waiver, you advise, can be granted to businesses as part of either a City or State incentive program to keep large employers in the City. More particularly, you advise that applications for incentives are evaluated by JEDC staff and, if approved, are

presented by the staff to the JEDC board (commissioners), but that JEDC board votes (decisions) on applications are advisory, with the final decision resting with the City Council.⁵ Additionally, you advise that another lawyer of the member's firm performs work for the corporation, but that the member personally does not, and that, in the past, the corporation also has retained the services of a non-lawyer, salaried employee of the firm (a former City Council member) for the purpose of providing political advice and guidance in applying to the JEDC for incentives. And we are advised that the member would recuse himself from voting on or participating in measures or matters of the JEDC involving any client of the firm.

Thus, pursuant to the foregoing information and history, you inquire whether, should the member be appointed to the JEDC, he would have a prohibited conflict of interest, were the corporation or another client of his firm to apply for such an incentive.

Relevant to this question, is Section 112.313(7)(a), Florida Statutes,⁶ 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.

Under the first part of Section 112.313(7)(a), a prohibited conflict of interest exists where a public officer (e.g., a city board member) holds employment or a contractual relationship with a business entity (e.g., a corporation) which is subject to the regulation of, or which is doing business with, the officer's public agency. Under the second part of the statute, a prohibited conflict exists where the officer holds any employment or contractual relationship, if the employment/contractual relationship will create a continuing or frequently recurring conflict between the officer's private interests and the performance of his public duties or if it would impede the full and faithful discharge of his public duties.

In the instant situation, we find that the member would hold employment or a contractual relationship with the corporation (or with any other client of his law firm which might seek to receive a JEDC-based waiver of taxes or similar incentive), regardless of whether the member personally works on the client's matters. See, for example, CEO 80-79 and CEO 10-20, in which we found, recognizing pertinent caselaw, that an attorney in a law firm (other than an "of counsel" attorney) has employment or a contractual relationship with all clients of the firm. Further, we find that the corporation (and likely any other client of the firm which would seek an incentive) would be a "business entity" under the applicable statutory definition of Section 112.312(5), Florida Statutes, which includes ". . . any corporation . . . doing business in this state."

However, we do not find that the corporation or other client of the firm would, by virtue of seeking or obtaining a waiver of taxes or similar incentive, be either regulated by or doing business with the JEDC or with the City. In order for "regulation" to exist, we have found that a business's operations or modes of doing business must be subject to the control or authority of a public agency. CEO 74-8. Here, such control or authority is lacking; rather, the instant situation (granting of a partial property tax waiver—incentive) is analogous to that of CEO 04-6, in which we did not find "regulation" by a city council of a private economic development entity to exist where the city council appropriated funds for the entity's use. Also, we have not found "regulation" where the government role was annexation (CEO 03-7) or where the government role was occupational tax licensing for revenue purposes (CEO 79-82). Further, we do not find that the corporation or other client of the member's firm would be "doing business with" the JEDC by virtue of the tax waiver or similar incentive. We have found "doing business" to exist where the parties have entered into a lease, contract, or other type of arrangement where one party would have a cause of action against the other in the event of a breach or default. CEO 86-24 and CEO 07-11. Assuming arguendo that the JEDC would be a "party" to a granting of a

tax waiver or similar incentive by the City Council, nothing presented in your inquiry indicates that a potentially actionable arrangement would result from the waiver. Rather, we view the waiver of taxes as analogous to the appropriation of city funds to the economic development entity in CEO 04-6 (a situation in which we found neither "regulation" nor "doing business" to exist).

Regarding the second part of the statute, we find that a prohibited conflict also would not be created for the member, provided that his firm does not represent the client in the client's JEDC incentive matter. We have found the second part to prohibit a public officer, or other members of his professional firm, from representing clients before the officer's public board (see, among others, CEO 96-1 and opinions cited therein). And while opinions of ours can be read to emphasize that such a prohibited conflict is based in the appearance of the public officer or a member of his private firm before the assembled public board, our decisions also recognize that such a prohibited conflict is grounded in the impediment to the objective performance of one's public duty occasioned by his firm's representation of its client intersecting the functions of the public board on which he sits, even if the officer's work for his firm does not involve advising the firm or its clients about matters of his public board. See CEO 96-1 (Question 1), an opinion concerning a member of the Jacksonville Electric Authority (JEA) who had a "special counsel" or an "of counsel" relationship with a law firm which represented bond underwriters on JEA bond issues, in which we stated:

Therefore, we find that, because of the Board member's close, regular and continuing relationship with the law firm and duty of loyalty to the clients of the law firm, a prohibited conflict of interest under the second part of Section 112.313(7)(a) would exist when the law firm appears before the JEA on behalf of a client, notwithstanding that the Board member's special counsel position does not entail advising the firm about JEA bond issues, projects, or contracts. An impediment to public duties could exist for the Board member to favor the law firm or the client (his private interests) and to disregard his public duty to act independently and impartially in the best interests of the JEA, when the firm's representation of the client involves the JEA. [Emphasis supplied.]

Regarding the instant situation, there is no doubt that the member, as a partner in the firm, would have a close, regular, and continuing relationship with his law firm and a duty of loyalty to the firm's clients seeking JEDC incentives via the firm's efforts. And we find that such a reality would create the "wearing of the second hat" or the "inability to simultaneously serve two masters in relation to the same subject," which is the essence of a prohibited conflict under the statute. *Zerweck v. State Commission on Ethics*, 409 So. 2d 57 (Fla. 4th DCA 1982). In other words, we are not persuaded that there is a meaningful difference under the second part of the statute between a situation in which a public board member's law firm undertakes representation of a client in a matter involving application to the member's public board, but stops short of appearing before the assembled board, and a situation where the firm goes on to appear before the assembled board, especially where the firm might communicate with staff of the board, prepare or strategize applications or paperwork submitted directly to the board or to its staff, and/or attend board meetings to be available for questions. Further, we find that the instant situation is distinguishable from that of CEO 89-29, in which we found that a city commission member's employment as executive director of a chamber of commerce lobbying the city commission was not conflicting if her chamber role was devoid of lobbying the city commission and devoid of chamber activities encompassing lobbying the city commission. Contrastingly, the current scenario would involve, were the firm to work on the incentive matter for its client, a licensed person (attorney) bound by professional duties to a client of his firm and would involve his firm's working for the client on a specific matter which simultaneously is a matter of his public board; it is not a situation involving an unlicensed person working generally for an umbrella organization of businesses.

Accordingly, we find that a prohibited conflict of interest would not be created for the member under Section 112.313(7)(a), Florida Statutes, were a client of his law firm to seek a JEDC incentive, provided the firm does not work on the incentive, including but not limited to not appearing for the client before the JEDC board.

QUESTION 2:

Is the JEDC an "advisory board" such that a conflict, if any were present, under Section 112.313(7)(a), Florida Statutes, is susceptible to waiver under Section 112.313(12), Florida Statutes?

Question 2 is answered in the negative.

Section 112.313(12) provides,⁷ in relevant part:

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be affected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person.

Section 112.312(1), Florida Statutes, defines "advisory body" as follows:

'Advisory body' means any board, commission, committee, 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.

However, for purposes of waiver under Section 112.313(12), we have found that the Legislature intended this exemption to apply to boards (in a generic sense) whose powers and authority are advisory, without regard to the size of a board's budget. See CEO 77-178.

We find that the JEDC is not an "advisory board" and thus that waiver, if waiver were needed, is not available. Notwithstanding that we found in CEO 87-60 that a predecessor entity of the JEDC [the Economic Development Council of the City of Jacksonville (EDCCJ)] was advisory and, thus, that waiver was available, we find that the JEDC is different. The entity at issue in CEO 87-60 was created by executive order of the Mayor and operated through ad hoc committees. In contrast, the JEDC's existence is more "institutionalized" via provisions of the City Charter, and its powers and duties do not appear to us to be merely advisory in nature, especially given the fact that it functions, inter alia, as the community redevelopment agency (CRA) for the City and given the fact that it has combined powers of several predecessor entities.⁸ City Charter provisions provide, in part:

There is created and established an autonomous body within the office of the mayor which shall be known as the Jacksonville Economic Development Commission. The commission is designated as the sole community redevelopment agency for the city according to part III, chapter 163, Florida Statutes. The commission shall serve as the city's only countywide industrial development authority with authority over all economic development functions within the City of Jacksonville. [Section 24.01, Jacksonville, Florida, Code of Ordinances.]

The commission shall operate with all the powers and authority of a community redevelopment agency under part III, chapter 163, Florida Statutes, as an industrial development authority under part III, chapter 159, Florida Statutes, and is authorized to function throughout all of the territorial limits of the City of

Jacksonville, Florida, as its only community redevelopment agency and only industrial development authority. As the city's sole community redevelopment agency, the commission shall be successor to and hereafter exercise all authority, power and responsibility which has heretofore been vested by resolution or ordinance of the council in either the Jacksonville Downtown Development Authority or the Jacksonville International Airport Community Redevelopment Authority. While it is intended that the commission shall have city-wide authority as both the city's industrial development authority and community redevelopment agency, the commission must secure council approval consistent with those powers and duties specifically retained by the council in Section 30.705 of the code and as required by part III of chapter 159 and part III of chapter 163, Florida Statutes. [Section 24.07, Jacksonville, Florida, Code of Ordinances.]

Further, Chapter 163, Florida Statutes, itself supports the view that a CRA is not just advisory,⁹ providing in part:

Upon a finding of necessity as set forth in s. 163.355, and upon a further finding that there is a need for a community redevelopment agency to function in the county or municipality to carry out the community redevelopment purposes of this part, a county or municipality may create a public body corporate and politic to be known as a 'community redevelopment agency' [Section 163.356(1), Florida Statutes.]

. . . . the members of the agency . . . constitute the head of a legal entity, separate, distinct, and independent from the governing body of the county or municipality [Section 163.357(1)(b), Florida Statutes.]

Accordingly, we find that the JEDC is not an advisory board regarding which waiver, if waiver were needed, is available under Section 112.313(12), Florida Statutes¹⁰.

QUESTION 3:

Would a prohibited conflict be created were a client of the member's law firm to apply to a subordinate board of the JEDC for a permit?

Question 3 is answered in the negative, provided that there is no appeal to the JEDC of the application decision of the subordinate board and provided that the firm does not provide work for the client regarding the application to the subordinate board.

In addition to the information set forth above, you advise that the Downtown Development Review Board (DDRB) is a subordinate board of the JEDC, that the DDRB has some permitting and zoning functions limited to the downtown area of the City (e.g., operating a sidewalk café downtown would require a permit from the DDRB), and that the permitting functions of the DDRB are "carried out entirely by its staff." Further, you advise that an appeal of a denied permit application could go from the DDRB to the JEDC board (the board the member would hold a seat on), but that such an appeal is "theoretical," in that it only has happened once in several years and in that it is not anticipated that any of the firm's clients would have any reason to apply for a DDRB permit or any reason to appeal denial of a permit to the JEDC. Additionally, you advise that any vote by the JEDC on an appeal would be advisory only, with the final decision on the matter resting with the City Council (under a de novo standard of review by the Council with no presumption of correctness attaching to the JEDC's handling of the matter).

Again, Section 112.313(7)(a), Florida Statutes, quoted above, is relevant.

Concerning permits from the DDRB, for example, to operate a sidewalk café, were we to consider Section 112.313(7)(a) in isolation, we could find that a prohibited conflict would be created for the member under the first part of the statute were a client of his firm to apply for or receive such a permit. In this circumstance, the member (a public officer) would hold a contractual relationship with the client (a business entity operating the café), and the client would be subject to the regulation of the JEDC (via the functioning of its subordinate board, the DDRB). See CEO 08-1, recognizing that a city's board of adjustment regulated a developer via the board's ability to grant conditional uses and variances sought by the developer, a situation analogous to the ability to grant a café permit.¹¹

However, we believe it is not appropriate to consider Section 112.313(7)(a) in isolation regarding this Question, but, rather, to consider the statute in conjunction with Section 112.316, Florida Statutes, also a part of the Code of Ethics, 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.

Unless there is an appeal of a client of the firm's subordinate board matter to the JEDC, or unless the firm does work for the client on the subordinate board matter, we find that it is appropriate to find, in regard to this Question, that Section 112.316 applies to negate the conflict, given the separation, in the main, between the functions of the JEDC and the functions of its subordinate board regarding such permits.

Question 3 is answered accordingly.

QUESTION 4:

Would a prohibited conflict be created were a client of the member's firm to apply to the DDRB for a zoning waiver or variance?

Under the circumstances presented and the conditions noted herein, Question 4 is answered in the negative.

Further, we are advised that the DDRB also functions similar to the City Planning Commission within the geographical area of the DDRB, in that, for example, DDRB staff handle applications for zoning waivers and variances, but that appeals from DDRB zoning variance or waiver decisions go straight to the City Council (for de novo review) and that they do not go to the JEDC.

Section 112.313(7)(a) is relevant. We find that a prohibited conflict would not be created under the first part of the statute were a client of the member's firm to seek or obtain a zoning waiver or variance from the DDRB. Notwithstanding the sharing of the permitting function by the DDRB and the JEDC (see Question 3, above), the scenario presented does not indicate that the JEDC has any function regarding zoning waivers and variances. Thus, we find no prohibited conflict under the first part of the statute, relying on Section 112.316, Florida Statutes, due to the JEDC's lack of an actual role regarding waivers and variances. Again, 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.

Under the second part of Section 112.313(7)(a), we also find no prohibited conflict, provided that the firm does not provide work for the client regarding the zoning waiver/variance¹².

Question 4 is answered accordingly.¹³

ORDERED by the State of Florida Commission on Ethics meeting in public session on December 3, 2010 and **RENDERED** this 8th day of December, 2010.

Roy Rogers, Chairman

^[1]Prior opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us) or may be obtained directly from the Commission.

^[2]We are advised that the law firm represents a variety of business entities and has more than one hundred practice areas; that the member is active with the local Chamber of Commerce in the promotion of the City's business opportunities to national and multinational corporations; and that, as a City native, the member has a keen interest in attracting appropriate businesses to locate and stay in the City.

^[3]We are advised that the JEDC has a budget of around ten million dollars and a salaried staff of seventeen employees, but that its members (commissioners), who are appointed by the Mayor with City Council approval, serve in a volunteer, unpaid capacity. In addition, we are advised that the commissioners have no authority to hire or fire JEDC staff, that the commissioners serve in an advisory capacity with respect to certain contracts, but that all JEDC-related contracts must be approved by the City Council in order to take effect, resulting in a situation in which the JEDC board has the ability to give advice to the City Council about expenditures of public funds but has no authority to spend money without Council approval.

^[4]You advise that the JEDC exists to help promote overall economic health throughout Duval County, that it oversees the administration of local and State incentives to businesses, the redevelopment of an airfield, and the administration of sports and entertainment programs. Thus, you maintain, "[t]here is . . . complete unity between the City's and [the member's] business goals."

^[5]You advise that, in the past, there have been occasions where an attorney of the member's firm or a non-lawyer of the member's firm communicated, either telephonically or in-person, with JEDC staff regarding a proposed incentive; that such communications were not adversarial; and that, generally, no person from the firm appeared in front of the JEDC at a board meeting, although there were occasions where someone from the firm was in attendance at a board meeting and was available to answer any questions from the board.

^[6]Section 112.313(3), Florida Statutes, is not in need of treatment by us, inasmuch as a tax waiver or similar "incentive" to the corporation or another client of the member's firm would not amount to the City or any agency of the City purchasing, renting, or leasing any realty, goods, or services from the corporation or other client, and would not constitute a rental, lease, or sale from any person or entity to the City or an agency of the City. Rather, private entities would be obtaining the incentive from the City. However, should the member be appointed to the JEDC and if, in the future, the substance or character of a particular "incentive" sought by the corporation or another of the firm's clients includes provision of some realty interest, goods, or services to the City, you, or the member, should contact us or our staff for further advice regarding Section 112.313(3). The statute 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), Florida Statutes.]

[7] CE Form 4A is used when waiver is applicable.

[8] We are advised that in 1997, the EDCCJ was folded into the new JEDC, along with the Jacksonville International Airport Community Redevelopment Authority, with this change also replacing the Downtown Development Authority, which was reconstituted as an advisory board to the JEDC; and that the Cecil Field Development Commission, too, was folded into the JEDC in 1997.

[9] And see, inter alia, Sections 159.45 and 159.47, Florida Statutes, regarding industrial development authorities.

[10] In making this finding, we have not overlooked the information you provided that any likely incentive from the JEDC to a client of the member's firm would not involve the CRA functions of the JEDC. However, we find that the exemption requires that the board or body (the whole of its attributes and operations) be "advisory," not merely some of its nature. And here, we also do not find that the non-advisory attributes of the JEDC are limited to its CRA functions.

[11] Whether a given conduct or action of a government entity constitutes "regulation," what "agency(s)" are engaged in the regulation, what government entity(s) are contained within a given agency, and what are the agency(s) of a particular public officer or employee are often complicated, intertwined issues. Here, it is our view, as stated above, that café permitting or similar functions constitute regulation. But, we do not find that the DDRB and the JEDC are separate agencies or that the JEDC is divorced from the regulation because, under the process described, the JEDC has an "appellate" role regarding the permitting. Instead, we find that the DDRB is not a separate agency from the JEDC (for purposes of such permitting), but, rather, that, for the permitting function, the DDRB is within the JEDC. See CEO 06-24 and opinions cited therein. CEO 06-24 and other opinions recognize that for a board to be a separate ("it's own") agency it should possess independent authority and not be solely advisory to another board or body. However, notwithstanding that the DDRB has a partial separation from the JEDC, as more fully discussed in Question 4 below, we do not find that it is as separate from the JEDC regarding the permitting subject matter, given the review function of the JEDC regarding permits and given your description of the DDRB as a board subordinate to the JEDC.

[12] In including this proviso, we have not overlooked CEO 07-13 (and similar opinions), which found that a city commissioner would not have a prohibited conflict were his law firm to represent a client before city boards other than the city commission. However, we are persuaded that the instant situation differs from that of CEO 07-13, in that the DDRB and the JEDC are more intertwined than were the city commission and the various boards in CEO 07-13.

[13] We also note the voting conflicts law applicable to local, appointed officials, Sections 112.3143(3)(a) and 112.3143(4), Florida Statutes. The member must comply with these statutes regarding any vote/measure/matter of the JEDC which would affect himself, his firm, any client of his firm, or any other person or entity enumerated in the statutes. In complying, he should utilize and follow the instructions on CE Form 8B. However, should a measure be considered by the JEDC in the capacity of a community redevelopment agency within the meaning of Section 163.356 or Section 163.357, Florida Statutes, Section 112.3143(3)(b), Florida Statutes, would operate not to require the member to abstain from the vote on the measure. The member still would be required to announce his private relationship and file Form 8B. CEO 86-13. Further, the member's voluntarily refraining from any participation in the matter, including not voting (recusal), in order to avoid even the appearance of impropriety, would appear to be in accord with Section 286.012, Florida Statutes. CEO 08-11.

CEO 08-12 -- June 11, 2008

**VOTING CONFLICT; UNAUTHORIZED COMPENSATION;
CONFLICT OF INTEREST**

**SCHOOL BOARD MEMBER'S RENTED RESIDENCE
OWNED BY ARCHITECT WHOSE FIRM DOES
BUSINESS WITH SCHOOL DISTRICT**

To: Franklin R. Harrison, Attorney for Bay County School Board

SUMMARY:

Under the circumstances presented, a school board member would not be presented with a voting conflict regarding measures affecting an architectural firm, an owner of which co-owns with his wife a residence leased, with an option to purchase, as the residence of the member and her husband. Under the circumstances presented, the votes/measures would not affect the member or her husband (relative) and "landlord" is not a relationship enumerated in Section 112.3143, Florida Statutes. The situation presented is indicative of a fair market value, arms-length transaction made by the owners of the property for the purpose of leasing/selling the property; it does not indicate that the transaction was intended to influence the member in her official capacity toward the firm. No prohibited conflict under either the first or second parts of Section 112.313(7)(a), Florida Statutes, is indicated, under the facts presented. CEO 77-34, CEO 83-42, CEO 98-9, CEO 02-16, and CEO 08-4 are referenced.

QUESTION 1:

Would a school board member be presented with a voting conflict under Section 112.3143(3)(a), Florida Statutes, regarding a board measure to award an architectural contract to a firm, an owner of which owns the member's rented residence?

This question is answered in the negative under the circumstances presented.

By your letter of inquiry and accompanying documents, we are advised that Donna Allen (member) serves as a member and Chair of the Bay County District School Board, having been first elected to the Board in 2002. In addition, we are advised that the member and her husband reside in a rented house owned by an owner of an architectural firm which has been doing business with the Board for over twelve years.¹ Further, you advise that the original lease of the house began in 2006 and was renewed in 2008, under the same terms and conditions, for an additional two years. Also, you advise that the rent is \$1,500 per month; that the lease contains an option to purchase for the amount of \$695,000; that the lessor reports that the previous tenant paid \$1,200 per month rent, with the house remaining vacant for ten months between the previous tenant's occupancy and the member's occupancy; that the just (market) value of the property according to the County Property Appraiser is \$634,129, with a substantial majority of the value being attributed to the land and not the structure; and that there is no evidence that the situation is anything more than an arms-length transaction.

Section 112.3143(3)(a), Florida Statutes, the portion of the voting conflicts law applicable to local, elected public officers such as school board members, provides:

VOTING CONFLICTS.—No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure 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 he or she 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(2); 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.

The statute requires declaration of interests, abstention from voting, and timely filing of a memorandum of voting conflict (CE Form 8B) regarding measures of one's public board which would inure to the special private gain or loss of the board member, the board member's relative, the board member's principal (e.g., client, employer), the board member's business associate, or other enumerated persons or entities.

We find that the member will not be presented with a voting conflict under the statute, and thus will not be subject to its requirements, regarding School Board measures which would inure to the special private gain or loss of the architectural firm, its owner who is an owner of the member's residence, or the firm owner's spouse who co-owns the property. Under the facts presented, neither the firm, its principals/owners, nor the wife of one of the firm's owners falls within any relationship to the member as enumerated in the statute. The landlord-tenant relationship has not been found to be encompassed within the law (CEO 77-34, CEO 83-42, CEO 02-16), the facts presented do not indicate the carrying on of a business enterprise by the member, her husband, the firm owner, or the owner's wife such that they would be "business associates" (CEO 08-4, Question 5; CEO 98-9, Question 1), and the facts presented do not indicate that Board measures affecting the architectural firm also would inure to the special private gain or loss of the member or her husband ("relative").²

This question is answered accordingly.

QUESTION 2:

Does the lease-purchase described herein constitute "unauthorized compensation" to the member prohibited by Section 112.313(4), Florida Statutes?

This question is answered in the negative under the facts presented.

Section 112.313(4) provides:

UNAUTHORIZED COMPENSATION.—No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

The statute requires that a public officer have either actual or constructive knowledge that a provider of an item to the officer, the officer's spouse, or the officer's minor child intended to influence the officer's vote or other official action by provision of the item. Commission on Ethics v. Barker, 677 So. 2d 254 (Fla. 1996).

Under the facts presented, which are indicative of an arms-length lease-purchase agreement at fair market value, we do not find the lease-purchase to be prohibited by the statute. The situation is indicative of intent by the owners to lease and sell their property for a fair price; it is not indicative of intent on the part of the owners to give away or provide the property at less than arms length in order to influence the member's Board actions regarding the firm.

This question is answered accordingly.

QUESTION 3:

Does the situation described above create a prohibited conflict for the member under Section 112.313(7)(a), Florida Statutes?

This question is answered in the negative under the facts presented.

Section 112.313(7)(a) 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.

Under the facts presented, under the first part of the statute, the member (assuming arguendo that she has a contractual relationship under the lease-purchase agreement identifying only her husband as tenant) would not hold a contractual relationship with the architectural firm (the business entity doing business with the Board/District) or with its owner in his professional firm capacity. Rather, she would hold a contractual relationship with the firm owner's wife (a party to the lease) and, apparently, the firm owner (as a natural person co-owning the property with his wife). Regarding the second part of the statute, we do not find that the arms-length lease-purchase situation presented would create a continuing or frequently recurring conflict between the member's performance of her public duties and her private interests or would impede the full and faithful discharge of her public duties.

This question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on June 6, 2008 and **RENDERED** this 11th day of June, 2008.

Albert P. Massey, III, Chairman

[1] Your inquiry materials show that the house is owned by the firm owner and his wife, that his wife alone is identified as landlord in the lease documents, and that the member's husband alone is identified as the tenant in the documents.

[2] Nevertheless, the member may, but is not required to, declare, abstain, and file under Section 286.012, Florida Statutes. CEO 83-42.