CEO 25-7 – September 17, 2025

CONFLICT OF INTEREST

NEWLY APPOINTED SCHOOL BOARD MEMBER WHOSE LAW FIRM IS DOING BUSINESS WITH THE SCHOOL BOARD.

To: Adam Cervera, School Board Member (Broward County)

SUMMARY:

A member of a school board would not have a prohibited conflict of interest created by contracts between his school board and his private employer that were entered into prior to his appointment to the school board, including renewals of those contracts under the same terms. However, agreements with new terms, executed subsequent to the member's appointment will not receive the benefit of "grandfathering" and would create prohibited conflicts of interest. Analysis and guidance are also provided concerning a school board member's limitations and prohibitions in voting and participating in matters concerning his private employer. Referenced are CEO 82-10, CEO 84-43, CEO 85-40, CEO 90-24, CEO 96-30, CEO 96-31, CEO 96-32, CEO 02-14, CEO 02-19, CEO 03-17, CEO 08-4, CEO 08-6, CEO 08-8, CEO 09-1, CEO 10-4, CEO 14-21, CEO 14-27, CEO 16-9, CEO 19-7, CEO 20-4, CEO 20-11, CEO 20-12, CEO 22-5, and CEO 23-4.

QUESTION 1:

Would existing special counsel services agreements (or the extension of those agreements) between a school board and the employer of a school board member create a prohibited conflict of interest for the member of the school board?

This question is answered in the negative.

In your inquiry, you state that the Governor appointed you to the School Board of Broward County ("School Board") on April 25, 2025.

In your private capacity, you state that you are a nonequity shareholder in the law firm of Becker & Poliakoff, P.A. ("Firm"). You indicate you are employed by the Firm as a trial attorney working in matters related to the business litigation and condo, co-op, and HOA groups. You state that you do not represent the School Board, nor are you assigned any legal duties that concern the School Board or any of its interests. Rather you indicate that your practice centers around the representation of the Firm's condominium association clients, and other clients, such as financial firms, investors, condominium associations, corporations, and small business owners.

While you do not personally attend to any of interests of the School Board in your role at the firm, you note that your firm does have a special counsel services agreement ("Agreement") with the School Board to provide legal services to the School Board in the areas of construction contracts and construction claims. You state that all of the duties under the Agreement, are handled by the Firm's construction litigation group and, as a nonequity shareholder, your compensation is

not affected by any of the activities of that group. You note that the Agreement between the Firm and the School Board was executed on July 23, 2024, and its current term ends on June 17, 2027.

You indicate the Agreement may be extended for two additional one-year periods, at the end of its current term. Against this backdrop, you ask whether the Agreement and its potential renewals present a prohibited conflict of interest for you.

To begin our analysis, we will turn to Section 112.313(7)(a), Florida Statutes, which 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 prohibits a public officer or employee from having any employment or contractual relationship with a business entity or an agency that is regulated by or is doing business with his or her agency. The second clause of Section 112.313(7)(a) prohibits a public officer or employee from having employment or 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.

Regarding the first clause of Section 112.313(7)(a), your agency is considered to be the lowest level of your organization to which your sphere of influence extends. See CEO 93-31. In this case, as a School Board member, your influence permeates the entire School District. Therefore, your agency is Broward County Public Schools, including the School Board. See CEO 14-21, CEO 14-27, and CEO 23-4.

Next, we must acknowledge that your role as a trial attorney and a nonequity partner constitutes an employment and/or contractual relationship with the Firm.[1] Also, through the Agreement, the Firm is "doing business" with the School Board. Therefore, because you are employed by the Firm, and the Firm is doing business with your agency, you do have a prima facie conflict of interest under the first clause of Section 112.313(7)(a). However, there may be an exemption available to negate the conflict.

We have applied Section 112.316, Florida Statutes,[2] to "grandfather" certain conflicting business relationships between a public officer's agency and his or her private employer when both

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[1] We have also opined that, as a partner in your law firm, you also have a contractual relationship with every client of your firm. See, e.g., CEO 16-9 and CEO 20-4. Your inquiry does not detail whether the other clients of your firm do business with the School Board or are regulated by the School Board and, therefore, this opinion does not reach whether those clients are a source of a conflict of interest. Please contact our legal staff for further guidance on this point, if necessary.

[2] 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

the business relationship and the private employment predate the public officer's office holding or the public employee's public employment. CEO 82-10; CEO 96-31; CEO 96-32; CEO 02-14; CEO 02-19; CEO 08-4, footnote 6; CEO 09-1, and CEO 22-5. We have said that such situations "[represent] a meeting of the minds . . . that occurred in a conflict-free environment." CEO 22-5. For example, in CEO 19-7, a pre-existing business relationship between a water management district and a corporation was found not to be a prohibited conflict of interest under Section 112.313(7)(a) for a shareholder of the corporation who was later appointed to the governing board of the water management district.

Here, you have indicated your employment relationship with the firm and the June 23, 2024 start date of the Agreement predate your recent appointment to the School Board. Therefore, we find that grandfathering is available to negate the prohibited conflict of interest under the first clause of Section 112.313(7)(a).

We now turn to the question of whether "grandfathering" pursuant to Section 112.316 can be applied to the two one-year extension/renewal periods allowed for by the Agreement. We have previously found that even when pre-existing contracts are "grandfathered," renewals and amendments to those contracts are considered new contracts no longer benefiting from the application of Section 112.316 unless "the renewal is for a time certain provided for in the original [contract] and the terms of the renewal remain the same as those of the original contract." See, e.g., CEO 09-1 (citing CEO 03-17).

For these reasons, where the renewals are contemplated by the original agreement, as long as the terms of the renewal remain the same as the original contract, the conflict of interest created under the first clause of Section 112.313(7)(a) will continue to be negated by grandfathering after the agreement is renewed.

We also find that a prohibited conflict of interest would not be created under the second clause of Section 112.313(7)(a) under the circumstances presented. *Cf.* CEO 08-6 and CEO 08-8, Question 1. Analysis under the second clause of Section 112.313(7)(a) looks beyond the fact that a public officer's private employer may be doing business with or may be regulated by his or her agency (because that is addressed by the first clause of the statute), and is focused on whether the facts present a different dynamic that would tempt the public officer to dishonor his or her public responsibilities. See Zerweck v. Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982). We do not identify any other circumstances in the facts as you present them that incentivize the prioritization of your private interests or those of your employer ahead of your public responsibilities. For example, your compensation and responsibilities at the Firm are unaffected by the work of the group at the Firm providing representation to the School Board.

It is worth noting, briefly, the first clause of Section 112.313(3), Florida Statutes,[3] prohibits a public officer from acting in an official capacity to purchase, rent, or lease goods or services for

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> 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.

[3] Section 112.313(3) states:

> 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

his or her own public agency from a business entity of which he or she is an officer, partner, director, proprietor or the owner of a material interest. In the past, we have found that a public officer "acts in his or her official capacity" for purposes of the first prohibition when a board of which he or she is a member (e.g., a school board) acts collegially to purchase, rent, or lease, regardless of whether the public officer abstains from voting on the matter. See CEO 90-24, CEO 10-4.

In your inquiry, you relate that you are a partner with the Firm, which brings you into this prohibition. However, the text in Section 112.313(3) expressly grandfathers contracts entered into prior to one's assumption of public office. See CEO 96-30; CEO 09-1; CEO 20-12, Question 1. Also, similar to our interpretation of grandfathering under Section 112.316 as applied to Section 112.313(7)(a) (explained above), the express grandfathering provided for in Section 112.313(3) does not apply to changes in contracts after a person assumes a public position (CEO 85-40 and CEO 84-43), but will apply to completely nondiscretionary renewals. CEO 82-10. We have also applied grandfathering when the original agreement expressly provides for renewal for a specified period and the provisions of the contract under the renewal are the same as the provisions of the original agreement. CEO 85-40. Therefore, as long as any renewals that the School Board votes to approve contain the same terms as the original agreement, and are contemplated by the original agreement, any conflict you are presented with under Section 112.313(3) will also be negated by grandfathering.

In conclusion, based on the facts presented, we find the prima facie conflict under the first clause of Section 112.313(7)(a) is negated by "grandfathering" for the current term of the Agreement, and for the renewals allowed for in the Agreement, as long as the terms of the renewals are the same as the original contract. Also, you do not have a prohibited conflict of interest under

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> 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.

the second clause of Section 112.313(7)(a), as there is no apparent temptation to dishonor your public responsibilities.

QUESTION 2:

> Would existing project specific engagement agreements between a school board and the employer of a school board member, as well as any future project specific engagement agreements between them, create a prohibited conflict of interest for the member of the school board?

This question is answered as follows.

In addition to the Agreement described in Question 1, you state that the School Board has hired the Firm for project specific engagement agreements ("Engagement Agreements"). Unlike the more general Agreement, you note the Engagement Agreements are entered into on an as needed basis for specific projects. As such, you indicate the Engagement Agreements do not have fixed terms for duration and would not be likely to contain an extension or renewal clause. Also, dissimilar to the Agreement, you state Engagement Agreements are entered into by the School Board's general counsel utilizing the School Board's delegated authority, and do not require specific action by the School Board. You note, there are currently four active Engagement Agreements, but you anticipate the Firm's services could be requested for more in the future.

As with the Agreement discussed in Question 1, above, the Engagement Agreements, are entirely related to construction contracts and claims and therefore are handled by the construction litigation group within the Firm. As stated earlier, you have no involvement with the construction litigation group, and your compensation is not affected by their work.

As such, we find that the analysis of whether a conflict exists related to the current Engagement Agreements to be the same as that of the Agreement analyzed in Question 1. There are prima facie conflicts of interest under Section 112.313(7)(a)—because your employer is "doing business" with your agency—and Section 112.313(3)—because your Firm is selling services to your agency. However, "grandfathering" is applicable to the agreements that were in place prior to your appointment to the School Board. Therefore "grandfathering" will apply to negate the conflict of interest created under Sections 112.313(3) and (7)(a) regarding the current Engagement Agreements.

The future Engagement Agreements would also create prima facie conflicts, as your employer would be doing business with your agency, but "grandfathering" will not be available to negate the conflicts because those services will be contracted after your appointment to your public office. See CEO 02-14, CEO 08-4 (note 6), and CEO 09-1. In the absence of an applicable exemption, future Engagement Agreements will be a source of prohibited conflicts of interest under Section 112.313(3) and (7)(a) for you.

QUESTION 3:

> Will a school board member have a voting conflict when an attorney employed by the member's firm needs to update or seek guidance from the school board either in public or closed session?

This question is answered as follows.

In your inquiry, you predict that an attorney from the Firm may need to appear before the School Board to seek guidance from the School Board or to provide advice or an update in regard to litigation occurring under either the Agreement or an Engagement Agreement. You ask whether these interactions with the Firm could present you with a voting conflict and under what circumstances you may participate in these attorney-client sessions.

Voting conflicts as they pertain to local public officers are addressed by Section 112.3143(3)(a), Florida Statutes, which states:

> 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.

A "principal by whom retained" is defined in Section 112.3143(1)(a), Florida Statutes as:

> an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one's client, employer, or the parent, subsidiary, or sibling organization of one's client or employer.

Therefore, the Firm, as your employer, is a principal by whom you are retained. See CEO 20-11 (note 6).

In addition, the Legislature codified the meaning of "special private gain or loss," in Section 112.3143(1)(d), Florida Statutes. This provision states:

> "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. [Section 112.3143(1)(d), Florida Statutes.]

Most relevant to your inquiry is that "special private gain or loss" means an economic gain or loss. So, any vote taken by you that would create a billing opportunity for the Firm—your principal—would pose a voting conflict for you. This includes any votes on renewing the Agreement, or any votes on Engagements Agreements. In those instances, you should follow the procedures set forth in Section 112.3143(3)(a): publicly state the nature of your conflict to the assembly, abstain from the vote, and file a Form 8B, "Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers" within 15 days of the vote. This applies to votes whether they occur in public session or in a closed session held under the procedures described Section 286.001(8).[4]

With regard to whether you may participate as a member of the School Board in those updates or attorney-client sessions, Sections 112.313(6) and 112.313(8), Florida Statutes, offer guidance.[5]

Section 112.313(6) states:

> MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

Pursuant to Section 112.312(9), Florida Statutes, "corruptly" is defined as

> . . . done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting

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[4] To provide an example, a vote to have an attorney from the Firm appear before the School Board or to enter a closed session under Section 286.011(8) with an attorney from the Firm would seem to create a billing opportunity for the Firm. This would be in addition to more obvious examples, such as votes initiating, ceasing, or expanding litigation handled by the Firm on behalf of the School Board.

[5] Of note, Section 112.3143(4) will not apply to you even though you were appointed to your role. This is because you are filling an elective office.

> from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

Here, we clarify that official acts that are merely accompanied by an incidental private benefit will not be considered corrupt acts that violate Section 112.313(6). See Blackburn v. State, Commission on Ethics, 589 So. 2d 431, 435-436 (Fla. 1st DCA 1991). As long as your participation in these sessions aligns with a valid public purpose, such as being informed of the litigation positions of the School Board and the expenses it is incurring, you will not be prohibited from attending these sessions. However, if you were to take some action that was in excess of merely attending the sessions and asking questions for informational purposes, one that benefited your own private interests, or the private interests of the Firm, more than incidentally, it is possible that Section 112.313(6) could be indicated.

Section 112.313(8) states:

> DISCLOSURE OR USE OF CERTAIN INFORMATION.—A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

It would be a violation of this subsection to disclose some non-public information gained through your office to obtain a benefit for yourself or your employer, among others. Your inquiry has not given any cause for concern on this front, but it is good to remain aware of your obligation not to disclose non-public information gained in these attorney-client sessions or otherwise in the course of your tenure as a public officer.

In short, you may attend and participate in sessions involving the Firm. However, you must be mindful of the provisions of Section 112.313(6) dealing with misuse of your public position and Section 112.313(8) dealing with disclosure of non-public information. You will also need to declare your conflict and refrain from voting on matters that would inure to the special private gain or loss of the Firm in accordance with Section 112.3143.

Your questions are answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on September 12, 2025, and **RENDERED** this 17th day of September 2025.

Jon M. Philipson, *Chair*