

MISUSE OF PUBLIC POSITION

**COUNTY COMMISSIONER ENDORSING A CANDIDATE ON COMMISSION-
PROVIDED LETTERHEAD**

To: Dr. Robert McCann (Manatee County)

SUMMARY:

A County Commissioner's use of the resources of his or her position, such as County-provided letterhead, to endorse a candidate violates Section 112.313(6), Florida Statutes. However, a County Commissioner may endorse a candidate on self-created letterhead identifying himself as a County Commissioner without violating Section 112.313(6) as long as he or she makes clear that the endorsement is a private one. Referenced are CEO 23-5; CEO 22-3; CEO 19-23; CEO 19-13; CEO 16-2; CEO 13-25; CEO 11-23; CEO 08-20; CEO 02-13; CEO 91-38; CEO 90-15; CEO 81-47; CEO 79-72.

QUESTION 1:

Can a County Commissioner use County-provided Commissioner letterhead to endorse another candidate for County Commission without violating the Code of Ethics for Public Officers and Employees?

This question is answered as follows.

You are a Manatee County Commissioner. You inform that the County has created a letterhead template specific for each County Commissioner's use. It includes a header with the Commissioner's name and his or her designation as a Manatee County Commissioner, the County seal, and the Board of County Commissioners' address. It also includes a footer with all of the Commissioners' names and the Board of County Commissioners' address.

With this background, you ask how you may ethically express your preference for a candidate for County Commission in the upcoming election cycle. Specifically, you inquire whether you may endorse your preferred candidate on the County Commissioner letterhead provided by the County if no public funds are expended and the endorsement is written off-duty and with no compensation or assistance from other county employees. You also ask whether you need to place a disclaimer on the endorsement, and, if so, what that disclaimer should state.

Ultimately, you inquire as to whether your uses of County-provided Commissioner letterhead and your County Commissioner title amount to a prohibited misuse of your public position. Both Section 112.313(6), Florida Statutes, and Article II, Section 8(h)(2), Florida Constitution, prohibit public officials from misusing or abusing their public positions or the resources of their positions to benefit themselves or certain others.

Misuse of Public Position – Section 112.313(6), Florida Statutes

Section 112.313(6) prohibits public officials and employees from corruptly using or attempting to use their official positions or property or resources within their trust in order to secure a special privilege, benefit, or exemption for themselves or another:

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.

A misuse of one's public position pursuant to Section 112.313(6) requires three factors be present. First, the public officer must have either taken or attempted to take some action in his public capacity or used a public resource within his trust. Second, the public officer's action must have resulted in, or would have resulted in, an actual, non-speculative benefit to the public officer or someone else. And, third, importantly, the public officer must have taken the action at issue with the corrupt intent of obtaining the resulting benefit. To be corrupt, the public officer's intent must be "wrongful" and the action taken for the intended benefit must have been "inconsistent with the proper performance of his or her public duties." § 112.312(9), Fla. Stat.

Generally, we do not opine on intent in advisory opinions because intent is difficult to ascertain without knowing all of the circumstances of a situation:

[I]ntent generally is determined from an examination of all relevant circumstances. We are able to do this on the basis of evidence presented through investigation and hearing when a complaint is filed, but in rendering an advisory opinion we are [subject to] a lack of access to information concerning all circumstances of the situation as well as information concerning the credibility of the individuals involved.

CEO 22-3 (quoting CEO 81-47). Here, we do not have the benefit of an investigation and its accompanying report. Nor do we have crucial details including, for example, the content of your proposed endorsement. Without this information, it is impossible for us to ascertain intent with any certainty.

However, it is clear that your personal decision to support a certain candidate, without more, is necessarily a private action. Your right – and, pursuant to Section 104.31(1), Florida Statutes, it certainly is a right – to endorse and campaign for any candidate of your choosing is, likewise, necessarily a private right. This Commission cannot, and does not, regulate any action you choose to take in your private capacity, including supporting a particular candidate. Actions taken in one's private capacity do not violate Section 112.313(6) because they are missing one of the three aforementioned elements: the use of either one's public position or the resources within one's trust as a public officer. CEO 16-2; CEO 90-15. In fact, we have previously explicitly held that the Code of Ethics for Public Officers and Employees contains no provision that would prohibit a public officer from, in his or her individual capacity, campaigning for another person who is seeking a seat on his board or commission "so long as you do not use or attempt to use your

official position, or any property or resource within your trust, to perform your official duties in order to assist a candidate for the city commission." CEO 79-72.

You inquire regarding the ethical boundaries of using your County-provided Commissioner letterhead to write a private endorsement of a particular candidate. You clarify you would not be expending any public funds for your endorsement; rather, you would simply use the personalized County Commissioner letterhead template provided by the County, write an endorsement in your private time, and disseminate the endorsement using your own funds.

We have previously held that "[t]he private use of public property is *prima facie* inconsistent with the proper performance of one's public duties." *In re: James K. Gordon*, 13 F.A.L.R. 1864 (Fla. Commission on Ethics, 1990) (aff'd in *Gordon v. State Com'n on Ethics*, 609 So. 2d 125, 126 (Fla. 4th DCA 1992)). In *In re: James K. Gordon*, we determined Mr. Gordon, a City Commissioner, violated Section 112.313(6) by using City Commission stationery and envelopes to send out letters promoting a symposium hosted by his private employer, a university.

Your use of the County-provided Commissioner letterhead for an endorsement would similarly amount to misuse of the public resources of your position, regardless of your assurance that no public funds would be used, because you would be using the resources of your public position for the solely private purpose of endorsing a candidate.

In a situation analogous to the one at hand, we found probable cause existed to determine a County Tax Collector violated Section 112.313(6) when he used his office's official letterhead to write an endorsement and authorized a newspaper to reprint his endorsement in full, including the letterhead. *In re Robert D. Moore*, Complaint No. 96-241. In line with this precedent, we determine that you may not use the public resource of County-provided Commissioner letterhead for the private endorsement of a candidate without violating Section 112.313(6), as that would amount to a prohibited use of the resources of your public position for a solely private benefit.

Your inquiry, however, is not limited to your use of County-provided letterhead. You ask, broadly, how you, a County Commissioner, can legally and ethically endorse another candidate for County Commission.

We have consistently opined that self-identification as a public officer, for autobiographical purposes, in and of itself, does not amount to a corrupt use of one's public position. CEO 08-20 (a Senator could identify himself as a senator on his private employer's website); CEO 19-13 (a police chief could wear his police uniform and identify his title while fundraising for his nonprofit organization); CEO 13-25 (a Senator could identify himself as such when providing a letter of support for a beautification grant application submitted by a city). Thus, you may identify yourself for autobiographical purposes as a City Commissioner in your endorsement without running afoul of Section 112.313(6), Florida Statutes.

We have also opined, on multiple occasions, that public officers may create their own letterhead identifying themselves as public officers, and use that letterhead for a private purpose, without violating Section 112.313(6), as long as the letterhead explicitly clarifies that the public officer is not speaking on behalf of his or her public body. The "controlling factor" is not whether the stationery is publicly purchased or whether it identifies the public officer as a public official, but rather, whether the stationery is "used in a manner or in a context supportive of the wrongfulness or corruption required by the statute." CEO 02-13.

To avoid creating the appearance that the opinions expressed in your private endorsement are opinions being made on behalf of your public body, your self-created letterhead and endorsement should not include any of your official contact information. For example, any contact information you include in your endorsement should be private contact information. Your public

contact information, including your county e-mail address, your county phone number, the county's website, and the address of the Manatee County Administration Building should not be in your endorsement.

Additionally, your endorsement should include a disclaimer that notes the opinions expressed within your endorsement are your own, private opinions.¹ For example, in *In re Ilene Lieberman*, Complaint No. 90-71, we determined probable cause did not exist to believe Ms. Lieberman had violated Section 112.313(6) where she created her own stationery and wrote letters to citizens recommending certain candidates. There, Ms. Lieberman's self-created stationery bore her name, her position, her city's seal, and a disclaimer at the bottom of the letterhead explicitly stating the document was a paid political advertisement.

Similarly, in CEO 91-38, we noted that Section 112.313(6) did not prohibit a city councilmember from using privately purchased stationery similar to her official stationery that bore her title, her name, and a statement that the stationery was not paid for with City funds, for personal letters, campaign purposes, and fundraising purposes.

And in CEO 23-5, we determined that a member of the board of trustees for an institution within the State University System could write articles about higher education issues for the online service *Substack* without violating Section 112.313(6), but warned that when authoring articles or making comments on matters related to his own university, "he should emphasize he is sharing only his personal opinions and not the opinions of the university board on which he serves" in order to "clarify he is offering only his personal opinion and is not speaking for the university itself, which could be construed as a use of his public position."

In summation, you may not use the resources of your public position, such as your County-provided letterhead, to write a private endorsement of a certain candidate for County Commissioner. You may, however, create your own letterhead for your endorsement in which you identify yourself as a County Commissioner, as long as your letterhead does not include any of your official contact information, but does include a disclaimer clarifying that the opinions expressed in the endorsement are your private opinions, as opposed to the opinions of your public body.

Should you choose to create your own letterhead indicating your position as a County Commissioner for your endorsement, we caution you to be aware of Section 165.043, Florida Statutes, which prohibits the reproduction of a county or municipal seal. That law had not yet been enacted when we considered *In re Ilene Lieberman*, Complaint No. 90-71, and it had only been recently enacted when we considered CEO 91-38, so the City in that case had not yet designated an official municipal seal. We encourage you to check your local ordinances to determine whether your seal has been designated an official municipal seal. The use of an official municipal seal in personal letterhead and in contravention of Section 165.043 could evince corrupt intent in violation of Section 112.313(6). Likewise, we also encourage you to familiarize yourself with your local ordinances to ensure you do not violate them by creating your own letterhead.

To the extent your inquiry mentions Section 104.31, Florida Statutes, otherwise known as Florida's Little Hatch Act, that statute is outside of our jurisdiction. Our jurisdiction is limited to the Code of Ethics for Public Officers and Employees and Article II, Section 8 of Florida's

¹ We lack the jurisdiction and expertise to opine on laws outside of the Code of Ethics for Public Officers and Employees. However, we encourage you to seek guidance regarding campaign and election laws to determine whether they require a disclaimer on a written endorsement made by a public officer or the inclusion of any specific language.

Constitution. § 112.322(3), Fla. Stat. (the Commission has jurisdiction as to the application of the provisions of Chapter 112, Part 3, and Article II, Section 8 of Florida's Constitution). CEO 11-23. We advise you to seek additional guidance regarding whether the use of your public title in an endorsement violates the Little Hatch Act.

Abuse of Public Position – Article II, Section 8(h)(2), Florida Constitution

Analysis must also be conducted pursuant to Article II, Section 8(h)(2), Florida Constitution, the sister provision of Section 112.313(6). Article II, Section 8(h)(2) forbids public officers and employees from abusing their public positions to obtain a disproportionate benefit for certain enumerated parties:

A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor, or in which he or she owns an interest.

The Commission has defined the term "disproportionate benefit" in Florida Administrative Code Rule 34-18.001(2)(a) to mean "a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties."

Some differences exist between Section 112.313(6) and Article II, Section 8(h)(2) of the Florida Constitution. For example, Section 112.313(6) is broader in that it applies when one's use of his or her public position results in a "special privilege, benefit, or exemption" to *anyone*; Article II, Section 8(h)(2) applies only if a "disproportionate benefit" is received by the public officer himself or herself, his or her spouse, children, or employer, or for any business in which he or she contracts, in which he or she is an officer, partner, director, or proprietor, or in which he or she owns an interest. CEO 19-23.

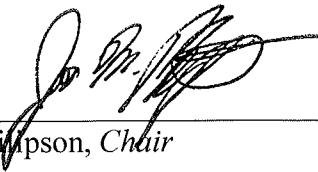
Here, you indicate that you do not have any relationships with any of the candidates you wish to endorse. One candidate has worked for you as a Commissioner Aide, but will leave county employment prior to running for the County Commission, and, regardless, was never your employer as required by Article II, Section 8(h)(2). Thus, it does not appear your endorsement of any of the candidates you currently wish to endorse could amount to a violation of Article II, Section 8(h)(2). However, should you wish to endorse any candidates with a relationship to you as specified above, we encourage you to reach back out to the Commission for additional analysis pursuant to Article II, Section 8(h)(2).

Additional Provisions

Finally, though nothing in your facts suggests the existence of a quid pro quo, we think it important to advise you that Section 112.313(2), Florida Statutes, prohibits a public officer from soliciting or accepting anything of value based upon an understanding that his or her official action will be influenced. And Section 112.313(4), Florida Statutes, prohibits a public officer from accepting anything of value where he or she knows, or should know with the exercise of reasonable care, that it is offered to influence his or her official actions. Again, there are no facts present in the instant request for guidance indicating that your endorsement would be given with the expectation of your receipt of something in return; however, such a quid pro quo could violate these provisions of the Code of Ethics.

Your question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on January 23, 2026, and **RENDERED** this 28th day of January 2026.



Jon M. Phimpson, *Chair*