



The Leagues' Elected Officials Ethics Seminar
Town of Lantana Recreation Center
418 S. Dixie Hwy., Lantana
October 30, 2019, 8:00 a.m.

Agenda

- | | |
|---|---------|
| ❖ Public Meetings
<i>Christy Goddeau, Esq.</i>
<i>Torcivia, Donlon, Goddeau & Ansay, P.A.</i> | 8 a.m. |
| ❖ Public Records
<i>Keith Davis, Esq.</i>
<i>Davis & Ashton, P.A.</i> | 9 a.m. |
| ❖ Florida Code of Ethics
<i>Jacob Horowitz, Esq.</i>
<i>Goren, Cherof, Doody & Ezrol, P.A.</i> | 10 a.m. |
| ❖ Florida and Palm Beach County Code of Ethics
<i>Ethics Officer Norm Ostrau,</i>
<i>City of West Palm Beach</i>
<i>Executive Director Mark Bannon,</i>
<i>Palm Beach County Commission on Ethics</i> | 11 a.m. |
| ❖ Adjournment | 12 p.m. |

FLORIDA PUBLIC MEETINGS LAW



CHRISTY L. GODDEAU
BOARD CERTIFIED CITY COUNTY
AND LOCAL GOVERNMENT ATTORNEY
TORCIVIA, DONLON, GODDEAU &
ANSAY, P.A.
701 NORTHPOINT PARKWAY
SUITE 209
WEST PALM BEACH, FL 33407
(561) 686-8700
CHRISTY@TORCIVIALAW.COM

PUBLIC MEETINGS LAW

Goals & Objectives

- I. FLORIDA'S SUNSHINE LAW
- II. COMMON EXEMPTIONS TO SUNSHINE LAW
- III. VIOLATIONS
- IV. SCENARIOS
- V. QUASI-JUDICIAL HEARINGS
- VI. QUESTIONS & COMMENTS

PUBLIC MEETINGS LAW

DISCLAIMERS

- A little information is a dangerous thing.
 - If you are not sure about a Public Meeting issue, **call** your City Attorney.
- Don't forget to review your city's policy.
 - Internal policy may dictate how your City complies with the law.
- Each public meeting can be unique.
 - Suggestions or opinions offered during this presentation may differ from your particular situation (always **call** your City Attorney with any questions)!

PUBLIC RECORDS TRAINING

Florida's Sunshine Law

§ 286.011, Florida Statutes

- History
- Not recommended for reading
- Courts have construed the law and declared:

**The entire decision making process
is a matter of public concern.**

PUBLIC RECORDS TRAINING

Florida's Sunshine Law

§ 286.011, Florida Statutes

- What is a Public Meeting:
- **Constitutional and Statutory Definitions**
- **Case Law**
 - Governing Body
 - Boards and Committees
 - Taking Action vs. Fact Finding

PUBLIC MEETINGS LAW



Florida's Sunshine Law

- Requirements of Public Meetings under section 286.011, Florida Statutes:
 - Reasonable notice
 - Open to the public
 - Minutes
 - Public Participation (added in 2013 by section 286.0114, Florida Statutes)

PUBLIC MEETINGS LAW



Florida's Sunshine Law

- Reasonable notice
 - Varies
 - Subject Matter of Meeting
 - Publishing Efforts
 - Internal Policy

PUBLIC MEETINGS LAW



Florida's Sunshine Law

- Open to the public
 - Location
 - Accessible
 - Audible

PUBLIC MEETINGS LAW



Florida's Sunshine Law

- Minutes
 - Promptly recorded and open for inspection
 - Drafts
 - Action Minutes vs. Talking Minutes

PUBLIC MEETINGS LAW

Florida's Sunshine Law

- Public Participation (added in 2013 by section 286.0114, Florida Statutes)
 - Application is limited
 - Policy should be adopted
 - Violation = *Not Void*

PUBLIC MEETINGS LAW

Florida's Sunshine Law **COMMON EXEMPTIONS**

- Pending litigation: settlement negotiations or strategy sessions related to litigations expenditures with limited attendees (§ 286.011, Fla. Stat.)
- Labor negotiations-bargaining team (§ 447.605, Fla. Stat.)
- Risk management (§ 768.28(16), Fla. Stat.)
- Presentations / negotiations related to competitive solicitations (§ 286.0113, Fla. Stat.)
- Public-Private Partnership unsolicited proposals (§ 255.065, Fla. Stat.)

PUBLIC MEETINGS LAW



Florida's Sunshine Law **COMMON EXEMPTIONS**

- Strictly follow statutory requirements
- Court reporter vs. audio recording
- Attendance
- Limits on access to transcript / recording

PUBLIC MEETINGS LAW



Florida's Sunshine Law **VIOLATIONS**

- Action is VOID
- Criminal Penalties
- Removal from office
- Non-criminal infractions
- Civil actions
- Attorney's fees

PUBLIC MEETINGS LAW

Florida's Sunshine Law **VIOLATIONS**

- Cure the violation:
 - Complete re-do of public meeting
 - Satisfy all public meeting requirements
 - Promptly cure

PUBLIC MEETINGS LAW

Florida's Sunshine Law **SCENARIOS**

- Social Media Posting
- Sending Memo on Position to Board Members
- Social Gathering
- Candidates Gathering /Debate

PUBLIC MEETINGS LAW

Quasi-Judicial Hearings

- Is it Quasi-Judicial?
- Script
- Ex Parte Communications (§ 286.0115, Fla. Stat.)
- Interested Parties
- Due Process

PUBLIC MEETINGS LAW

QUESTIONS & COMMENTS

THANK YOU!



Keith W. Davis, Esq.

*Florida Bar Board Certified Attorney
City, County and Local Government Law
Email: keith@davisashtonlaw.com*



PALM BEACH COUNTY LEAGUE OF CITIES, INC. ANNUAL ETHICS TRAINING SEMINAR

October 30, 2019

PUBLIC RECORDS – A PRESENTATION AND DISCUSSION FOR ELECTED OFFICIALS

By: Keith W. Davis, Esq.

1. THE BASICS.

Chapter 119 F.S. is the Florida Public Records Act.

“It is the policy of this state that **all** state, county, and **municipal records are open for personal inspection and copying by any person.**”

“**Providing access to public records is a duty of each agency.**”

A public record is “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, **or other material, regardless of the physical form**, characteristics, or means of transmission, **made or received** pursuant to law or ordinance or **in connection with the transaction of official business by any agency.**”¹

The municipality’s “**Custodian of public records**” (often the municipal Clerk) is charged with the **responsibility of maintaining the office** that contains the municipality’s public records. The records should be kept “in the buildings in which they are ordinarily used.”

Finally, the law requires that “**every person who has custody of a public record shall permit the record to be inspected** and copied by any person desiring to do so, at any **reasonable time**, under **reasonable conditions**, and **under supervision** by the custodian of the public records.”²

2. APPLICATION TO ELECTED OFFICIALS.

Agency is defined in Chapter 119 F.S. to **include “municipal officers”**. **Elected officials ARE officers** of the municipality (see Chapter 112, F.S. containing the Standards of Conduct for Public Officers).

Statutory reference to the “Custodian of records” does not alter the duty of disclosure upon every person who has custody of a public record. As such “**custodian” means “every person who has custody of a public record.**”³

3. PRACTICAL EFFECT FOR ELECTED OFFICIALS.

What happened when a constituent asks ME to see a public record?

The law allows **ANY PERSON** to have access to public records.

The law does not require that the person be made to fill out a form or participate in any other formal process in order to given access to a public record.

The law does not require the person to be a resident or business owner in the municipality.

¹ Sec. 119.011(12) *Fla. Stat.* (2019).

² Sec. 119.07(1)(a) *Fla. Stat.* (2019).

³ *Puls v. City of Port St. Lucie*, 678 So.2d 514 (Fla. 4th DCA 1996).

The law does not require the person to identify themselves or the reason that they want to see the records.⁴
 On the other hand, as mentioned above, access to public records must be under “reasonable conditions”;
 at “reasonable times”; and
 under supervision of the custodian or records.

Anyway, it’s not as though I have any public records that I carry around with me ... Or Do I??

The definition of a **public record clearly captures the medium of e-mails**: “E-mail messages made or received by agency officers (including municipal elected officials) in connection with official [municipal] business are public records...”⁵
(OUTLOOK APP)

Remember, even if its only a one-way e-mail and nobody responds to it, even though you may have avoided the potential Sunshine Law issues, it is still a public record.

The definition of a public record clearly captures the medium of text messaging: **The same rules that apply to e-mail should be considered for** electronic communications including Blackberry PINS, SMS communications (**text messaging**), MMS communications (multimedia content), and instant messaging conducted by government agencies.”⁶
(TEXT MESSAGE / TWITTER APP)

Postings to a municipality’s social media page, are presumed to be public records. Additionally, **postings to a private page by municipal personnel to the extent that the content also meets the statutory definition of a public record**, are also public records.⁷
(FACEBOOK / LINKED IN APP)

Sounds like my smartphone is nothing but a “Bank of Bad Habits”⁸ (public records) after that!
Well, maybe it’s not THAT BAD...

What’s **NOT a public record?**

⁴ “As long as the citizens of [Florida] desire and insist upon ‘open government’ and liberal public records disclosure, as a cost of that freedom, public officials have to put up with demanding citizens even when they are obnoxious as long as they violate no laws.” *State v. Colby*, No. MM96-317A-XX (Fla. Highlands County Court May 23, 1996). “Even though a [municipality] may believe that a person or group are fanatics, harassers or are extremely annoying, the public records are available to all of the citizens of the State of Florida.” *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Circuit Court December 17, 1991).

⁵ *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d. 851, 855 (Fla. 1st DCA 2013). See also AGO 96-34 and 01-20.

⁶ Inf. Op. to Browning, March 17, 2010. Note that in response to this opinion, the Department of State revised records retention schedules to include these types of message mediums.

⁷ AGO 09-19 and 08-07.

⁸ With apologies to Jimmy Buffett, Barometer Soup Album, 1995.

Personal notes and recordings that are **held privately and that have not been communicated to anyone** even if the content involves municipal business are not public records because this information has not been perpetuated, communicated or formalized any knowledge.⁹

There is an argument that private notes made by an elected official to summarize or memorialize the events of a council meeting, or discussions regarding municipal business, even for the official's own personal sole use, do formalize knowledge and therefore are public records.

Transitory text messages, e-mails or voice messages for purposes of scheduling meetings, or coordinating travel, etc. ("Can I get a ride to the League of Cities meeting?")

4. BEST PRACTICES FOR ELECTED OFFICIALS.

Is there another way to communicate the matter? **Good old-fashioned in person meetings, or even telephone calls**, do not create public records; although a recorded voice message (if its content otherwise meets the definition of a public record) would.

Limit text messaging to transitory matters that do not perpetuate, communicate, or formalize any knowledge regarding municipal business.

Be aware of social media postings related to municipal business, whether on the municipal page or a private page. Pause and think before you hit the "send" button and create a public record.

Do not be your own records custodian. To the extent possible, utilize municipal issued e-mail addresses and telephones / smart phones that provide for capture and archiving of data by the custodian of records or their designee. Let staff do their job.

Records retention: if you DO create e-mails or text messages or social media posts which are not archived and stored by the municipal custodian of records (or designee) automatically through the e-mail address, phone, or municipal social media page that is issued by and/or controlled by the municipality, then you should preserve these records yourself. Forward copies to the custodian of records for proper archiving and storage as soon as possible. **Deleting these records is not appropriate and could result in sanctions against you personally.**

5. OOPS, WHAT HAPPENS IF THE PUBLIC RECORDS LAW IS VIOLATED BY AN ELECTED OFFICIAL?

The Public Records Act provides **civil penalties against any public officer of up to \$500.00 for a failure to comply.**

⁹ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

Additional penalties can include removal from office and criminal prosecution for “knowing and intentional” violations.

The award of **attorney’s fees, and costs** of enforcement are available to the successful plaintiff as well.¹⁰

¹⁰ Secs. 119.10 and 119.12, *Fla. Stat.* (2019).

Code of Ethics for Public Officers and Employees (Ch. 112, Part III, F.S.)



PRESENTED BY:

JACOB G. HOROWITZ, ESQ.
GOREN, CHEROF, DOODY & EZROL, P.A.
3099 EAST COMMERCIAL BLVD., SUITE 200
FORT LAUDERDALE, FL 33308
(954) 771-4500 - OFFICE
(954) 771-4923 - FAX

WWW.GORENCHEOF.COM

What are “Ethics?”

Ethics is knowing the difference between what you have the right to do and what is the right thing to do.

- Justice Potter Stewart



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Legislative Intent

- It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law.
- Sec. 112.311, F.S.

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“Public Officer” – Sec. 112.313, F.S.

- ...any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

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Standards of Conduct

- Solicitation or Acceptance of Gifts
- Doing Business with One’s Agency
- Unauthorized Compensation
- Misuse of Public Position
- Conflicting Employment or Contractual Relationship
- Disclosure or Use of Certain Information

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Solicitation/Acceptance of Gifts

- Do not ask for or accept anything of value (including a gift, loan, or promise of future employment) based on an understanding that it will influence your actions or judgment as a public officer.
- Bribery; *quid pro quo*



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Doing Business with One's Agency

- Do not purchase, rent or lease realty, goods or services for your agency from a business of which you, your spouse or your child is an officer, partner, director or owner, or in which you, your spouse or child has a material interest.
- Do not rent, lease, or sell any realty, goods or services to your agency from your business.
- Exceptions

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Unauthorized Compensation



- You, your spouse or your minor child should not accept anything of value when you know, or should know, that it is being given to influence an action in which you are expected to participate as a public officer.
- Gifts for influence

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Misuse of Public Position



- A public officer or agency employee cannot:
 - “Corruptly” use or attempt to use
 - Public position or resources
 - To obtain a special benefit for privilege
 - For oneself or others
- “Corruptly” means done with a wrongful intent and for the purpose of obtaining ... any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

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Conflicting Employment / Contractual Relationship



Do not hold any employment or contract:

- With a business or agency regulated by or doing business with your agency;

OR

- Which will pose a conflict between your private interests and your public duties.

- Exemptions

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Gifts – Section 112.3148, F.S.



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Who is subject to the “gift” requirements?

- “Reporting Individual” – Form 1 or Form 6
- “Procurement Employee” – Employee of executive branch or judicial branch involved in procurement if the cost of service or commodity is expected to exceed \$10,000 in any fiscal year.
- Other Consideration – Palm Beach County Code of Ethics

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What is a “gift?”

- Anything you receive for which you did not give equal or greater consideration ... within ninety (90) days.



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Examples of Gifts

- 1) Real property or the use of real property
- 2) Tangible or intangible personal property (or use thereof)
- 3) Preferential rates on debts, loans, goods, services
- 4) Forgiveness of indebtedness
- 5) Food or beverage
- 6) Membership dues
- 7) Entrance fees, admission fees, and tickets to events
- 8) Plants and flowers

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What IS NOT a “Gift”?

- 1) Salary or benefits associated with employment
- 2) Awards in recognition of public or civic service
- 3) Use of a public facility for a public purpose
- 4) Honorary membership in a service organization
- 5) Transportation provided for official business



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Gifts from PBLOC/FLOC are not “Gifts”

Gifts by a state, regional, or national organization which promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization or officials or staff of a governmental agency that is a member of that organization.

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Accepting / Reporting Gifts

- Whether a gift may be accepted and whether it must be reported is a function of two things:
 - 1) Identity of the donor; and
 - 2) Value of the gift (>\$100).

Form 9 – Quarterly Gift Disclosure

Other Consideration – PBC Code of Ethics

Do not disclose gifts from “relatives.”

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How to Value a Gift?

- Actual cost to donor
- Do NOT include taxes or gratuities
- Official has 90 days to provide compensation for the gift, which will be deducted from the value
- Pro-rate

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How to Value a Gift? - Continued

Transportation – based on a roundtrip basis unless only one way is provided. Transportation in private conveyance given same value as comparable commercial conveyance.

Lodging – consecutive days are considered one gift. Lodging in private residence valued at \$44 per night.

Entrance/Admission fees – face value of ticket or per event basis, whichever is greater. If donor is a *charitable organization*, value does not include portion of cost that represents a contribution to that charity.

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Voting Conflicts – Section 112.3143, F.S.



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Voting Conflicts



A public official must abstain from voting on a measure which would inure to the special gain or loss of:

- 1) the official;
- 2) a business associate;
- 3) a relative;
- 4) a person who has retained the official; or
- 5) the parent subsidiary, or sibling organization or subsidiary of a principal which has retained the official.

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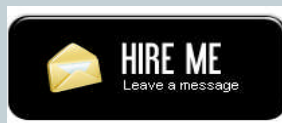
“Appearance” of Voting Conflicts

- Section 286.012, F.S.
- Quasi-judicial proceedings
- **YOU MUST VOTE UNLESS YOU HAVE A LEGAL CONFLICT!**

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Restriction on Employment of Relatives

A public official may not appoint, employ, promote, or advance, **or** advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is **serving** or over which the official **exercises jurisdiction or control** any individual who is a relative of the public official.



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Other Ethics Considerations



- 1) Full and Public Disclosure of Financial Interests
- 2) Florida Commission on Ethics
- 3) Florida Constitution; Article II, Sec. 8
- 4) Ch. 838, F.S.

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THE END



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COMPARING THE FLORIDA AND PALM BEACH COUNTY CODE OF ETHICS

NORM OSTRU, ETHICS OFFICER, CITY OF WEST PALM BEACH

MARK BANNON, EXECUTIVE DIRECTOR, PBC COMMISSION ON ETHICS

MEMBERS OF THE FLORIDA AND PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

Florida COE

- Nine members appointed by the Governor and legislative leaders.
- All complaints must be sworn (no ability to self-initiate complaints).
- Probable Cause/adjudication by Administrative Law Judge.
- Five-year statute of limitation.
- Binding Advisory Opinions.
- Up to \$10,000 fine per violation-removal from office, restitution, salary reduction, public reprimand, pension.
- Require four-hours training annually.

Palm Beach County COE

- Five members appointed by various non-governmental stakeholders with restrictions on membership.
- Complaints sworn and substantially based on personal knowledge (but ability to self-initiate complaints).
- Probable Cause determined by COE, adjudication by either COE or hearing officer.
- Two-year statute of limitations.
- Advisory Opinions are advisory only.
- \$500 fine per violation, public reprimand, restitution, letter of instruction (State Attorney may file "knowing and willful violations" as 1st degree misdemeanor. (Sec. 2-448)
- Mandatory training per policy of local government.

AUTHORITY FOR THE CODE OF ETHICS AND THE COMMISSION ON ETHICS (COE)

Article II, Section 8 of the Florida Constitution gives the authority for the Florida Code of Ethics, and the Florida Commission on Ethics.

- Section 112.326, Florida Statutes, (and Article VIII, Section 1(g) of the Florida Constitution as PBC is a charter county), allow for the adoption of a local Code of Ethics, so long as it is more stringent and not in conflict with the Florida Code of Ethics.
- Article VIII of the PBC Charter establishes the Palm Beach County Code of Ethics and the COE.

INTENT AND JURISDICTION

- **Intent:** The intent of the Florida Code of Ethics is to restrict conflicts of interest without creating unnecessary barriers to public service.
- **Jurisdiction:** All public officers (and candidates for office), board members, employees and lobbyists.
- **Intent:** The intent of the Palm Beach County Code of Ethics is to require impartiality in public actions, and increase public trust in local government.
- **Jurisdiction:** All county and municipal public officers, board members, employees, contract employees performing a government function, vendors of local governments, and lobbyists, principals and employers of lobbyists who lobby local governments.

PROHIBITED CONDUCT UNDER THE FLORIDA AND PALM BEACH COUNTY CODE OF ETHICS

DUEL PUBLIC EMPLOYMENT

- **Duel public employment:** Section 112.3125 (Florida Statutes), prohibits any public officer from accepting public employment with the state or local political subdivision, when that employment is for the purpose of gaining influence or other advantage based on the public office held (includes candidates).
- **Duel public employment:** While there is no direct provision that addresses this issue in the Palm Beach County Code of Ethics, where such employment is based on a “*quid pro quo*” situation, it would be in violation of section 2-443 (*Prohibited conduct*), and section 2-444(e), (*Gift law*), of the Palm Beach County Code of Ethics.

SOLICITATION OR ACCEPTANCE OF GIFTS OF ANY AMOUNT BASED ON “QUID PRO QUO”

- Section 112.313(2), (Florida Statutes), prohibits the solicitation and/or acceptance of a “gift” of any amount, where that gift is given based on a “*quid pro quo*” for some official action, or the promise of some future official action.
- i.e., Bribery and/or kickbacks are prohibited, and are criminal actions.
- Section 2-444(e), (Gift law) Section of the Palm Beach Code of Ethics similarly prohibits any gift of any amount to be accepted based on:
 - An official public action taken, or which could be taken;
 - A legal duty performed, to be performed or which could be performed;
 - A legal duty violated or to be violated, or which could be violated.

CONTRACTUAL RELATIONSHIPS

(DOING BUSINESS WITH ONES OWN AGENCY)

- Section 112.313(3), (Florida Statutes), prohibits a public officer or public employee from, directly or indirectly, purchasing, leasing or renting any realty, or goods or services for their agency, from any person or entity where they, their spouse, and/or child (alone or in combination), has a material interest.
 - For purposes of this statute, a “material interest” means they are an officer, director, or proprietor, or has at least a 5% ownership interest in the provider.
- Section 2-443(d), (*Contractual relationships*), of the PBC Code of Ethics similarly prevents a public official or employee from entering into contracts to provide, or to actually provide goods or services to their agency where the official or employee (or you, your spouse, a household member, or a close family relative alone or in combination) has an ownership interest in the provider (5%).
- It also includes your “outside employer” unless an exception applies.

CONTRACTUAL RELATIONSHIPS (CONT.)

(DOING BUSINESS WITH ONES OWN AGENCY)

- Section 112.313(7), (Florida Statutes), also prohibits holding employment or contractual relationships with any business entity or agency that is regulated by the official or employees government entity.
- It further prohibits holding any employment or contractual relationship that would create a “frequently occurring” conflict or otherwise impede the full and faithful discharge of public duties.

EXCEPTIONS TO THE CONTRACTUAL RELATIONSHIPS PROHIBITION UNDER THE PBC CODE OF ETHICS

1. Outside employer is another governmental entity.
2. Sealed-bid/Low-bid contract (and meet some additional requirements).
3. Emergency purchases.
4. Sole source of supply (two-ways this may apply).
5. Goods/Services valued at less than \$500 annually.
6. You are an employee, and meet the part-time exception under 2-443(e)(5).
7. Police and Fire exception for off-duty details.

* Under Section 112.313(14), (Florida Statutes), state law offers an exception for employment by a 501(c)(3), where this entity has entered into contracts with the employing public agency so long as not directly compensated by this arrangement, has not participated in the contract, and abstains from votes related to this employer.

UNLAWFUL COMPENSATION

- Section 112.313(4) and (5), Florida Statutes, prohibit a public officer or employee (or their spouse or minor child), from accepting any compensation, payment or thing of value when they should know with the exercise of “reasonable care” that the it was given to influence some public action.
- Again, this is “bribery,” or a “kickback” which are both criminal acts under Florida law.
- Section 2-443(a), (*Misuse of public office or employment*), also prohibits these types of public action for financial gain (as does the previously discussed Gift law section).
- The same standard applies concerning that the official or employee “**knew or should have known with the exercise of reasonable care**” that their public action was tied to some unlawful compensation (*quid pro quo*).

CORRUPT MISUSE

- Section 112.313(6), (Florida Statutes), prohibits a public officer or employee from the use of their official position or of any property of resource within their trust, or perform any official duty, to “**corruptly**” secure any a special privilege, benefit, or exemption for their self or another.
- “Official misconduct”
- Section 2-443(b), (*Corrupt misuse of official position*) of the PBC Code of Ethics also discusses a prohibition against the use of official position, employment or resource to obtain any “special privilege, benefit, or exemption” for any person.
- It defines the term “corruptly” to mean:
 - “done with wrongful intent,” and
 - For the purpose of obtaining, or compensating or receiving compensation from some act or omission that is “**inconsistent with the proper performance or his or her public duties.**”

MISUSE OF PUBLIC OFFICE OR EMPLOYMENT

- Unlike the Florida Code of Ethics, the PBC Code under Section 2-443(a), ties the use of official position for **financial gain** to seven specific persons or entities. So, you may not use your official position to obtain a “special financial benefit” (one not available to other similarly situated people or entities), for:
 1. Yourself;
 2. Your spouse, domestic partner, household member or dependent;
 3. Any close family relative;
 4. Your outside employer or business, or the outside employer of business of your spouse of domestic partner;
 5. A customer or client of your outside employer or business;
 6. A substantial personal debtor or creditor (more than \$10,000);
 7. A civic group, union, charitable, or religious organization, or other not-for profit, if you, your spouse or your domestic partner are officers or directors of that organization.

BLIND TRUSTS

- While the PBC Code of Ethics does not have a specific exemption, Section 112.313(3 & 7), (Florida Statutes), does prohibit acting in an official capacity, including voting on an issue where the conflict of interest is hidden within what is referred to as a “blind trust.”

DISCLOSURE OR USE OF “INSIDE INFORMATION” FOR BENEFIT OF YOURSELF OR OTHERS

- Section 112.313(8), (Florida Statutes), prohibits the use of information obtained through your official position (current or former official or employees), that is not available to the general public, to obtain some financial benefit or advantage, for yourself or any other person.
- Section 2-443(i), of the PBC Code of Ethics also prohibits the use of this information for the personal gain of any person, including the official or employee, and includes former officials and employees as well.

OFFICE HOLDING BY EMPLOYEES

- Section 112.313(10), (Florida Statutes), prohibits any public employee from holding office within the political subdivision by whom they are employed.

LOBBYING BY FORMER OFFICIALS OR EMPLOYEES

- Section 112.313(14), (Florida Statutes), prohibits any former local elected official from lobbying the same body within two-years of them leaving office.
- Similarly, Section 2-142 of the County Post-Employment Ordinance, prohibits former Palm Beach County Commissioners and certain former high level County employees, from representing anyone other than the County in connection with any matter (this includes lobbying of the County Commission), for a specific period of time after leaving office or employment.
- This ordinance only applies to former County Commissioners and certain former employees.

NEPOTISM

- Section 112.3135, (Florida Statutes), prohibits any “public official” from appointing, employing, promoting, or advocating for these on behalf of any close family relative as defined in the statute.
- Section 2-445 (*Nepotism*), of the PBC Code of Ethics also prohibits these actions but adds the term “domestic partner” as well.
- And, for the purposes of this section, the term “official” also includes an employee who is vested with the authority to appoint, promote, or employ such public employees, or to advocate for these things for a close family relative.
- However, for cities with less than 35,000 population, a close family relative may be appointed by a public employee or official to any advisory board that does not have land-planning or zoning responsibilities.

ACCEPTING TRAVEL EXPENSES

- While the Florida Code of Ethics does not address this issue, the PBC Code of Ethics prohibits any official or employee from accepting travel expenses directly from any county or municipal contractor, vendor, service provider, bidder or proposer.
- This provision may be waived for a specific payment by a majority vote of the governing body if they chose to do so.
- It also exempts payment of these expenses by other governmental entities, and organizations that the county or municipality are members of, if that travel is related to this membership (i.e., PBC League of Cities and similar groups).

CONTINGENCY FEE PROHIBITION

- Section 112.3217, (Florida Statutes), prohibits any person from giving or accepting, in whole or in part, any “contingency fee” that is dependent in any way on the passage or defeat of any specific executive branch action.
- Section 2-443(g), (Contingency fee), of the PBC Code of Ethics also prohibits payment or acceptance of contingency fees that is tied to the “passage, defeat or modification of: an ordinance, resolution, action or decision of the Board of County Commissioners, or any local municipal governing body, or any employee authorized to act on behalf of these governing bodies.
- There are a few exceptions to this prohibition listed in the Code of Ethics.

HONESTY IN APPLICATIONS

- While the Florida Code of Ethics does not directly address this issue, Section 2-443(h), (*Honesty in applications*), of the PBC Code of Ethics prohibits any person seeking to become an official or employee of the County or any municipality within the County, or to enter into a contract to provide goods or services for these entities, to make any false statement, submit any false document, or knowingly withhold information about wrongdoing in connection with employment by or services to these entities.
- However, the state does have criminal laws that may cover the submissions of false documents, or false statements when given under oath.

VOTING CONFLICTS UNDER THE FLORIDA CODE OF ETHICS

- Section 112.3143, (Florida Statutes), prohibits any public officer (elected or appointed) from voting on any matter before their body that will result in any “**special private gain or loss**” which would inure to them, a relative or business associate, to any principal by whom they are retained, or to the parent organization or subsidiary of such a corporate principal.
- Elected officials must state the nature of the conflict on the record, and recuse themselves from the vote, although they may participate in any discussions leading up to said vote. Within 15 days, they must file a written memorandum (may use the State Form 8b), and send it to the Florida Commission on Ethics.
- Appointed officials must follow similar disclosure rules, although once they disclose the conflict of interest on the record, they are prohibited from participating in discussions on the issue as well as voting on the matter (participation in this context means an attempt to influence the decision). They must also file a conflict of interest memorandum (or Form 8b) with the Florida Commission on Ethics.

VOTING CONFLICTS UNDER THE FLORIDA CODE OF ETHICS (CONTINUED)

- When considering whether something will result in a “**special gain or loss,**” the following factors should be considered:
 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 compared to other members of the class.

VOTING CONFLICTS UNDER THE PBC CODE OF ETHICS

- Section 2-443(c), (*Disclosure of voting conflicts*) controls the actions of both elected and appointed officials pertaining to voting conflicts.
- This code section is linked to Section 2-443(a), in that the same seven persons or entities that an official or employee is prohibited from giving a “**special financial benefit**” by that section, are the same persons and entities he or she is prohibited from giving a “special financial benefit” (or loss) via their vote.
- So, if said vote provides a “special financial benefit” (or loss) to any of those seven persons or entities under 2-443(a), the official is prohibited from voting on that issue and must recuse.
- Further, when they complete their memorandum of conflict (or Form 8b), they must send a copy to the PBC Commission on Ethics at the same time.
- Finally, under the PBC Code of Ethics both elected and appointed officials are prohibited from **participating or voting** in any matter in which one or more of those seven persons or entities will receive a special financial benefit (or loss).

GIFT LAW

GIFT LAW – FLORIDA CODE OF ETHICS

- Section 112.3184, (Florida Statutes) governs gifts for State reporting individuals (all elected officials and certain others).
- Reporting requirements are governed by state law, and state law prohibitions apply as well.
- Gift Disclosure Forms (Form 9), are filed quarterly (if needed to be filed).
- Gifts from vendors and lobbyists cannot exceed \$100 annually.
 - Charitable exception, public purpose exception.
- Gift receivers have 90 days to return a prohibited gift, or repay the prohibited portion of the gift.
- Gifts from relatives are exempt from disclosure.

GIFT LAW – PBC CODE OF ETHICS

- PBC Code of Ethics Section 2-444 is known as the “Gift law.”
- For state reporting individuals, all reporting requirements are under state law (but if required to file by state, must send copy to PBC COE at same time).
- Prohibitions against giving and receiving certain gifts are governed by both state law and the PBC Code of Ethics.
- May not solicit any gift for your personal use, or the use of another official or co-worker.
- Gifts valued at \$100 or more (annually in the aggregate), are prohibited if from any vendor of your government, or any lobbyist, principal or employer of a lobbyist who lobbies your government.
- Valuation of gifts are as set forth under state law.

GIFT LAW – PBC CODE OF ETHICS (CHARITABLE SOLICITATION EXCEPTION)

- Charitable gift solicitation allowed for soliciting vendors and lobbyists for charitable purpose, as long as on behalf of a charity that is qualified under IRS Section 501(c)(3).

But:

- Cannot solicit vendor or bidder if there is a pending application for approval or award not yet decided.
- Cannot use county or municipal resources for solicitation.
- No quid pro quo given to donor for the charitable donation.
- Must file a charitable solicitation log.

MISCELLANEOUS PROVISIONS

- Section 112.3148(5), (Florida Statutes), gifts from political committee prohibited.
- Section 112.3149, (Florida Statutes), solicitation and disclosure of honoraria.
- Section 112.3145, (Florida Statutes), Disclosure of financial interests.
 - Section 112.3145(5), Client disclosure
- Section 112.316, (Florida Statutes), Construction.
- Section 112.314(7), (Florida Statutes) and Section 2-260.4, Commission on Ethics Ordinance, Attorneys fees and costs may be awarded for false complaints.
- Section 112.3187, (Florida Statutes) and Section 2-260 (g), Commission on Ethics Ordinance, Whistle Blower Complaints.
- Section 2-447, PBC Code of Ethics, Non-Interference with investigations.



THIS JOINT PRESENTATION SPONSORED BY THE **PALM BEACH COUNTY LEAGUE OF CITIES**
AND THE **PALM BEACH COUNTY COMMISSION ON ETHICS** MAY BE USED TO FULFILL YOUR
ONE-HOUR PBC CODE OF ETHICS MANDATORY RE-TRAINING REQUIREMENT, AS WELL AS
FOR A PORTION OF YOUR ANNUAL 40 HOUR ETHICS TRAINING MANDATED BY THE STATE
OF FLORIDA FOR COUNTY AND MUNICIPAL ELECTED OFFICIALS

WE APPRECIATE YOUR ATTENDANCE