THE FLORIDA SENATE

OFFICE OF GENERAL COUNSEL

Location
305 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

Senate's Website: *www.flsenate.gov*

GEORGE LEVESQUE
General Counsel

February 4, 2012

OPINION 13-01

TO: [redacted]

FROM: George T. Levesque

SUBJECT: Conflict between employment and legislative activities

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You have asked what limitations exist, if any, on your legislative activities in light of your employment as [redacted]

Based on our conversation and also upon my independent research, the following facts are relevant to the analysis: The [redacted] is a 501(c)(3) charitable organization established to honor and memorialize "those [redacted] who have sacrificed their lives for the nation and the [redacted] program by sponsoring the [redacted], and by implementing innovative education technology programs."[1] [redacted] receives fifty percent of the funds generated by the annual use fees related to the sale of the [redacted] license plate. *See* § 320.08058[redacted], Fla. Stat. [2] These funds make up a significant portion of [redacted] budget. Additionally, [redacted] is a principal and has hired a registered contract lobbyist to represent [redacted] before the Florida Legislature.

You are the [redacted] and a salaried employee of that entity. Your duties do not include lobbying the Legislature, and your compensation is in no way associated with your legislative efforts as a State Senator. In fact, you are not involved with the legislative efforts of your employer, and the contract lobbyists retained by [redacted] report to the Vice Chair of the Board of Directors.

Analysis

As a prefatory matter, I do not believe any prohibited conflict exists that would bar your employment with [redacted]. Section 112.313(7), Fla. Stat., addresses employment or contractual conflicts of interest relating to a public officer or employee and entities which are regulated by or

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[1] [redacted] last accessed on January 22, 2013.

[2] The other half of funds generated by the sale of the [redacted] license plates is distributed to the [redacted] *See* § 320.08058[redacted], Fla. Stat. Based on information and belief, the [redacted] will be dissolved in the near future.

doing business with their agency. Although your employer is a principal which retains a lobbyist to represent its interests before the Legislature, the Commission on Ethics has found that a prohibited employment conflict under this statute would not exist where the officer is not engaged in legislative lobbying activities on behalf of the officer's employer or client. *See* CEO 90-8, 95-21, 03-3; *compare* CEO 06-12. Accordingly, there is no conflict of interest which would prohibit your employment in the present context.

Given your position as a State Senator and your employer's interests before the Legislature, the question then arises as to what activities you may permissibly engage in, if any, related to matters which come before the Legislature that may impact your employer. As a statutory matter, there is nothing in the Code of Ethics that proscribes your activities as a legislator in the legislative process, e.g., there is no statute that prohibits you from filing and voting on bills, engaging members, or meeting with constituents on matters that come before the Legislature. *Compare* § 112.3148(4), Fla. Stat. (limiting an appointed public officer's participation in certain conflicts).

It is fundamental to a representative democracy that a citizen legislator be allowed to fully represent the interests of his or her constituents, notwithstanding the potential conflicts. Examining permissible activities, the Commission on Ethics has concluded that § 112.313(7), Fla. Stat., does not prohibit a State Senator's filing and supporting general and special legislation of interest to his private law client, where a Senator is not compensated in any way by the client for his efforts as a member of the Legislature. S*ee* CEO 03-11; *see also* CEO 91-8 (State Representative who was an officer and shareholder of corporation engaged in the business of developing detention facilities while serving on a corrections committee); CEO 95-21 (State Senator chairing banking and insurance committee while serving as director of insurance company); and CEO 81-12 (State Representative's participation in both general and special legislation affecting his client did not create an impermissible conflict of interest).[3] Based on these opinions, it would appear that you may meet with constituents and others related to legislation that may affect your employer, including legislation that may create a special private gain to your employer; however, for the reasons stated below, your meetings may not involve or include your employer or lobbyists which represent your employer.

The Commission has treated the issue of lobbying differently from other types of employment and contractual conflicts. A member may not lobby the Legislature on behalf of an employer or client. Such activity would violate the prohibition on representation before state agencies as well as the provisions contained in § 112.313(7), Fla. Stat., which address frequently reoccurring conflicts. *See* CEO 03-3; 90-8. In situations where a state legislator's law firm was retained to lobby clients before the Legislature, the Commission recommended the following safeguards:

> (1) You do not lobby other members of the Legislature in behalf of your firm or its clients, or in regard to matters of concern to the firm or its clients.
> (2) Your income from your relationship with the firm, whether characterized as salary, profit-sharing, or some other item, must not flow from the firm's legislative lobbying activities or from fees or moneys paid the firm for lobbying or related activities. That is, your income or remuneration must come from your activities as a litigator before courts and local government bodies, from your other work unconnected to legislative lobbying, and from firm work unconnected to legislative lobbying; and it must not include bonuses, finders fees, or similar compensation, related to lobbying

[3] There is no prohibition or restriction in law on a member's legislative advocacy activities. Section 112.3143, Fla. Stat., only requires a member to disclose conflicts unlike other prohibitions that extend to participation. If the Legislature had intended to expand the scope of the prohibition to advocacy, it could have done so.

> clients.
> (3) You must abstain from voting on or participating regarding claims bills concerning the firm or its clients.
> (4) You must not file any legislation for the firm or its clients.
> (5) You must disclose your firm's representation of clients before the Legislature (in order to reveal potential for conflict).
> (6) Your employment agreement with the firm prohibits members of the firm from lobbying you on behalf of any firm client.

CEO 03-3. While your situation is dramatically different from that of a law firm hired by a wide variety of clients, I believe the safeguard described in item (6) of CEO 03-3 would be applicable to your situation. You should be scrupulous in refraining from any involvement with the legislative activities that are orchestrated by your employer's contract lobbyist. Further, though I do not believe it would be legally required, I would suggest that you not file legislation that relates to your employer so as to avoid any appearance that you are being compensated to act on your employer's behalf.

You would still be obligated to vote on legislation that affects your employer, but would be required to disclose voting conflicts that create a special private gain or loss for your employer. *See* Senate Rule 1.20 (requiring every senator to vote on matters put before him or her unless required to abstain); and Senate Rule 1.39 (setting forth voting conflicts which require disclosure). As for voting conflicts, it is impossible to assess whether conflicts exist at this time. Such an analysis requires an examination of the matter pending and the facts potentially giving rise to the conflict. In the present case, the principal would be your employer. Determining how the legislation affects your employer and others would be required as prerequisite to assessing whether a conflict exists which would require disclosure. As you begin to consider and cast your vote on legislation that comes before you, please keep these obligations in mind.

The above opinion is based upon facts which you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

I would be remiss if I did not provide some additional cautionary advice.

The Code of Ethics further provides that no member "shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties to secure a special privilege, benefit, or exemption for himself or others." *See* § 112.313(6), Fla. Stat. Moreover, no member "shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity." *See* § 112.313(8), Fla. Stat. While I am not aware of any facts which would indicate that these provisions are applicable to your situation, it would be prudent to keep these in mind. The law grants latitude to members based upon the recognition that they are part-time legislators that require outside employment and have lives outside their public office. That concept sometimes may get lost in public discourse, and what may be a legally-tolerated conflict of interest may be viewed as inappropriate or corrupt in the court of public opinion.

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GEORGE LEVESQUE
General Counsel

February 18, 2013

OPINION 13-02

TO: The Honorable [redacted]

FROM: George T. Levesque

SUBJECT: Conflict between employment and legislative activities

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You have asked for an opinion addressing potential conflicts of interest related to a prospective position you are considering with a government consulting firm.

Based on our conversations, the following facts are relevant to the analysis: You are considering employment with a government consulting firm (Firm). The Firm currently provides consulting services to clients related to issues involving local governments and the federal government. The Firm does not presently represent clients before state agencies or the Legislature. The Firm is not a law firm, and you are not an attorney.

As an employee of the Firm, you would provide consulting services to the clients of the Firm. You would also represent the Firm's clients before local governments or the federal government. You have indicated the Firm may be expanding the scope of its services provided to clients to include advice and representation before state agencies and the Legislature; however, you would abstain from the Firm's activities directed to state-level agencies and the Legislature and would not be involved with the planning, strategizing, or representing of clients before these state entities.

Analysis

Your situation raises two main potential conflicts of interest: conflicts in employment with the Firm and conflicts related to the Firm's clients. Each potential conflict will be addressed in turn in the opinion below.

Section 112.313(7), Fla. Stat., provides:

> (7) 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.
> . . . .
> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

You are a Member of the Florida Senate, your "agency" for the purposes of this analysis. The first part of the provision prohibits you from being employed by or having a contractual relationship with any business entity which is subject to the regulation of, or doing business with the Legislature; however, subparagraph 2 provides an exception permitting such employments and contracts where the regulatory power is exercised through the passage of laws. The Commission on Ethics has consistently recognized this exception with respect to members of the Florida Legislature. *See e.g.* CEO 11-3, CEO 8-20, CEO 91-1, and CEO 90-8. Accordingly, I believe it is acceptable for you to accept employment with the Firm.

Nevertheless, the Commission has concluded that the exception created by subparagraph 2 does not resolve all conflicts. *See* CEO 91-1. The second part of paragraph (a) prohibits you from having any employment or contractual relationship that will create a continuing and frequently recurring conflict between your private interests and the performance of your public duties, or that would impede the full and faithful discharge of your public duties.

> This prohibition 'establishes an objective standard which requires an examination of the nature and extent of the public officer's duties together with a review of his private employment to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which "tempts dishonor."' Zerweck v. State Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4th DCA 1982). . . . .
>
> We recognize that all employers in this state are affected by the laws enacted by the Legislature. Further, we recognize that some employers contribute to and join organizations which seek to represent their common interests before the Legislature. Still other employers, including many public agencies, professional associations, and large corporations, maintain a lobbying presence at each legislative session in order to advance their interests. As the members of our Legislature are expected to serve as citizen-legislators on a part-time basis and must be employed elsewhere to support themselves and their families, each of these situations presents the potential for conflicts of interest.

CEO 91-1. For example, in CEO 06-12 the Commission advised the incoming president of the Florida Association of Realtors that a conflict under § 112.313(7)(a), Fla. Stat., would be created were she to serve in the House since she would be the 'face' of the organization, would be its highest ranking member, and would have significant legislative duties as its president. Likewise, in CEO 06-19 the Commission advised a Member of the House that a prohibited conflict of interest would be created under this section if he were to work for Waste Management Corporation as its Manager of Community and Municipal Relations, reasoning that the two positions – that of legislator and that of consultant – would be indistinguishable to others and himself, based upon the list of duties he disclosed about the employment. I find these two opinions inapplicable to your situation, yet cautionary.

Given your position as a State Senator and the prospect of the Firm's potential clients' interests before the Legislature, the question then arises as to what activities you may permissibly engage in, if any, related to matters which come before the Legislature that may impact the clients of the Firm. As a statutory matter, there is nothing in the Code of Ethics that expressly proscribes your activities as a legislator in the legislative process, i.e., there is no statute that prohibits you from filing and voting on bills, engaging members, or meeting with constituents on matters that come before the Legislature. *Compare* § 112.3148(4), Fla. Stat. (limiting an appointed public officer's participation in certain conflicts).

It is fundamental to a representative democracy that a citizen legislator be allowed to fully represent the interests of his or her constituents, notwithstanding the potential conflicts. Examining permissible activities, the Commission on Ethics has concluded that § 112.313(7) does not prohibit a State Senator's filing and supporting general and special legislation of interest to his private law client, where a Senator is not compensated in any way by the client for his efforts as a member of the Legislature. S*ee* CEO 03-11; *see also* CEO 91-8 (State Representative who was an officer and shareholder of corporation engaged in the business of developing detention facilities while serving on a corrections committee); CEO 95-21 (State Senator chairing banking and insurance committee while serving as director of insurance company); and CEO 81-12 (State Representative's participation in both general and special legislation affecting his client did not create an impermissible conflict of interest).[1] Based on these opinions, it would appear that you may meet with constituents and others and participate in legislation on matters that may affect clients of the Firm, *except for those clients of the Firm who are represented before the Legislature*. This exception is discussed in greater detail below.

The Commission has treated the issue of lobbying differently from other types of employment and contractual conflicts. A member may not lobby the Legislature on behalf of an employer or client. Such activity would violate the prohibition on representation before state agencies as well as the provisions contained in § 112.313(7), Florida Statutes, which address frequently recurring conflicts. *See* CEO 03-3; and CEO 90-8. In situations where a state legislator's law firm was retained to lobby clients before the Legislature, the Commission recommended the following safeguards:

[1] There is no prohibition or restriction in law on a member's legislative advocacy activities. Section 112.3143, Florida Statutes, only requires a member to disclose conflicts, unlike other prohibitions that extend to participation. If the Legislature had intended to expand the scope of the prohibition to advocacy, it could have done so.

> (1) You do not lobby other members of the Legislature in behalf of your firm or its clients, or in regard to matters of concern to the firm or its clients.
> (2) Your income from your relationship with the firm, whether characterized as salary, profit-sharing, or some other item, must not flow from the firm's legislative lobbying activities or from fees or moneys paid the firm for lobbying or related activities. That is, your income or remuneration must come from your activities as a litigator before courts and local government bodies, from your other work unconnected to legislative lobbying, and from firm work unconnected to legislative lobbying; and it must not include bonuses, finders fees, or similar compensation, related to lobbying clients.
> (3) You must abstain from voting on or participating regarding claims bills concerning the firm or its clients.
> (4) You must not file any legislation for the firm or its clients.
> (5) You must disclose your firm's representation of clients before the Legislature (in order to reveal potential for conflict).
> (6) Your employment agreement with the firm prohibits members of the firm from lobbying you on behalf of any firm client.

CEO 03-3. While your situation is slightly different from that of a law firm or other professional firm, I believe the Commission would likely conclude those situations to be analogous to your situation. S*ee* CEO 11-6; CEO 85-14. Accordingly, I would advise that you follow the safeguards described in CEO 03-3. You may comply with the disclosure requirements by filing quarterly client disclosure for clients of the Firm represented before state agencies as required by § 112.3145, Florida Statutes, along with disclosing voting conflicts related to clients of the Firm as required by § 112.3143, Florida Statutes and Senate Rule 1.39. As a reminder, you should be scrupulous in refraining from any involvement with the legislative lobbying activities that are orchestrated by your Firm.

As for voting conflicts, you would still be obligated to vote on legislation that affects clients of the Firm, and would be required to disclose voting conflicts that create a special private gain or loss for the Firm or the Firm's clients. *See* Senate Rule 1.20 (requiring every senator to vote on matters put before him or her unless required to abstain); and Senate Rule 1.39 (setting forth voting conflicts which require disclosure). This requirement would apply regardless of whether the Firm's client was represented before the Legislature.

It is impossible to assess whether voting conflicts exist at this time. Such an analysis requires an examination of the specific matter pending before you, and the facts potentially giving rise to the conflict. In the present case, the principal would be either the Firm or its clients. Determining how the legislation affects the Firm and its clients would be required as prerequisite to assessing whether a voting conflict exists which would require disclosure. As you begin to consider and cast your vote on legislation that comes before you, please keep these obligations in mind.

The above opinion is based upon facts which you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

I would be remiss if I did not provide some additional cautionary advice.

The Code of Ethics further provides that no member "shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties to secure a special privilege, benefit, or exemption for himself or others." *See*

§ 112.313(6), Fla. Stat. Moreover, no member "shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity." *See* § 112.313(8), Fla. Stat. While I am not aware of any facts which would indicate that these provisions are applicable to your situation, it would be prudent to keep these in mind. The law grants latitude to members based upon the recognition that they are part-time legislators that require outside employment and have lives outside their public office. That concept sometimes may get lost in public discourse, and what may be a legally-tolerated conflict of interest may be viewed as inappropriate or corrupt in the court of public opinion.

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GEORGE LEVESQUE
General Counsel

March 14, 2013

OPINION 13-03

TO: The Honorable [redacted]

FROM: George T. Levesque

SUBJECT: Conflict Employment

You have asked for an opinion addressing potential conflicts of interest related to your representation and your firm's representation of a client (Client) who itself is a principal that retains lobbyists, and a prospective bill that may impact that Client.

Based upon our conversations, the following facts are relevant to the analysis: you are an attorney in a law firm that represents before local governments the Client, a company that sells traffic control devices to local governments. You have represented the Client for several years, and your representation predated your seeking the office of State Senator. Neither you nor anyone in your firm represents clients before the Legislature. The Client at issue is a principal with lobbyists who represent the Client before the Legislature. You are not affiliated in any way with the Client's lobbyists, and neither you nor your firm is compensated in any way related to matters that are brought before the Legislature. In regard to the Client's industry, there are fewer than five businesses that offer products and services that are identical or similar to the products and services offered by the Client.

Analysis:

Section 112.313(7), Florida Statutes, provides, in relevant part:

> (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.
>
> ….

> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

Notwithstanding the exception in subparagraph 2 otherwise allowing your contractual relationship with entities regulated by the Legislature through the passage of laws, the Commission on Ethics has concluded that subparagraph 2 does not resolve all conflicts. *See* CEO 91-1. The second part of paragraph (a) prohibits you from having any employment or contractual relationship that will create a continuing and frequently recurring conflict between your private interests and the performance of your public duties, or that would impede the full and faithful discharge of your duties.

Given your position as a State Senator and the prospect of matters impacting the Client's interests coming before the Legislature, the question arises as to what activities you may permissibly engage in, if any, related to matters that come before the Legislature that may impact your Client. As a statutory matter, there is nothing in the Code of Ethics that expressly proscribes your activities as a legislator in the legislative process, i.e., there is no statute that prohibits you from filing and voting on bills, engaging in debate in committees and on the floor, or meeting with constituents on matters that come before the Legislature. *Compare* § 112.3148(4), Fla. Stat. (limiting an appointed public officer's participation in matters where the officer has a conflict of interest).

It is fundamental to a representative democracy that a citizen legislator be allowed to fully represent the interests of his or her constituents, notwithstanding the potential conflicts. Examining permissible activities, the Commission on Ethics has concluded that § 112.313(7), Fla. Stat., does not prohibit a State Senator's filing and supporting general and special legislation of interest to his private law client, where a Senator is not compensated in any way by the client for his efforts as a member of the Legislature. *See* CEO 3-11; *see also* CEO 91-8 (State Representative who was an officer and shareholder of corporation engaged in the business of developing detention facilities while servicing on a corrections committee); CEO 95-21 (State Senator chairing banking and insurance committee while serving as director of insurance company); and CEO 81-12 (State Representative's participation in both general and special legislation affecting his client did not create an impermissible conflict of interest).[1] Based upon these opinions, it would appear that you may meet with constituents and others and participate in legislation on matters that affect your Client, but, for the reasons below, you should tread cautiously when dealing with legislative matters involving the Client.

The Commission has treated the issue of lobbying differently from other types of employment and contractual conflicts. A member may not lobby the Legislature on behalf of an employer or client. Such activity would violate the prohibition on representation before state agencies as well as the provisions contained in §§ 112.313(3) and (7), Florida Statutes, which address doing business with one's agency and frequently recurring conflicts, respectively. *See* CEO 03-3 and

[1] There is no prohibition or restriction in law on a member's legislative advocacy activities. Section 112.3143, Florida Statutes, requires only that a member disclose conflicts, unlike prohibitions that extend to participation. If the Legislature had intended to expand the scope of the prohibition to advocacy, it could have done so.

CEO 90-8. In situations where a state legislator's law firm was retained to lobby clients before the Legislature, the Commission recommended the following safeguards:

> (1) You do not lobby other members of the Legislature in behalf of your firm or its clients, or in regard to matters of concern to the firm or its clients.
>
> (2) Your income from your relationship with the firm, whether characterized as salary, profit-sharing, or some other item, must not flow from the firm's legislative lobbying activities or from fees or moneys paid the firm for lobbying or related activities. That is, your income or remuneration must come from your activities as a litigator before courts and local government bodies, from your other work unconnected to legislative lobbying, and from firm work unconnected to legislative lobbying; and it must not include bonuses, finders fees, or similar compensation, related to lobbying clients.
>
> (3) You must abstain from voting on or participating regarding claims bills concerning the firm or its clients.
>
> (4) You must not file any legislation for the firm or its clients.
>
> (5) You must disclose your firm's representation of clients before the Legislature (in order to reveal potential for conflict).
>
> (6) Your employment agreement with the firm prohibits members of the firm from lobbying you on behalf of any firm client.

CEO 03-3. Although your situation appears one step removed from that addressed in CEO 03-3, the safeguards are nevertheless instructive and cautionary. There appear to be sufficient indicia that your compensation is in no way related to your legislative activities, e.g., your representation of the Client in capacities that do not involve the Legislature and your long-standing representation of the Client which predates your election to the Florida Senate, such that these safeguards aimed at avoiding the appearance that a legislator is being compensated for his or her legislative efforts would appear inapplicable. However, because the Commission has viewed the aspect of lobbying as different, I would caution you to not intermingle your private business interactions with the Client with legislative matters so as not to blur those distinctions.

As for voting conflicts, it is impossible to say with certainty what may constitute a conflict of interest that requires disclosure at this time; however, I can provide this direction. You are obligated to vote on legislation that affects the Client, and are required to disclose voting conflicts that create a special private gain or loss for it. *See* Senate Rule 1.20 (requiring every senator to vote on matters put forth before him or her unless required to abstain). Whether a matter will create a special private gain or loss for the Client will depend on the nature of the changes contemplated by the bill or amendment. Because it appears that the nature of the Client's industry is sufficiently small and its proportional share of the market sufficiently large, any measure aimed at its industry that would be to its financial benefit or detriment would appear to be a special private gain or loss requiring disclosure.[2] *See* Senate Rule 1.39. Because the Client does have a lobbyist, I would encourage you to be both overly cautious and timely in your disclosures, and would draw special attention to the part of Senate Rule 1.39 that requires a

[2] An example of a situation where the Client may receive a private gain or loss, but where the gain or loss would not be special, would be where the benefit or harm is conveyed on a much larger group, such as a broad based corporate income tax measure which would affect the Client and many other companies.

Senator to make every reasonable effort to file their disclosure memorandum prior to casting his or her vote.

The above opinion is based upon facts you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

I would be remiss if I did not provide some additional cautionary advice.

The Code of Ethics further provides that no member "shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties to secure a special privilege, benefit, or exemption for himself or others." *See* § 112.313(6), Fla. Stat. Moreover, no member "shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity." *See* § 112.313(8), Fla. Stat. While I am not aware of any facts which would indicate that these provisions are applicable to your situation, it would be prudent to keep these in mind. The law grants latitude to members based upon the recognition that they are part-time legislators that require outside employment and have lives outside their public office. That concept sometimes may get lost in public discourse, and what may be a legally-tolerated conflict of interest may be viewed as inappropriate or corrupt in the court of public opinion.

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GEORGE LEVESQUE
General Counsel

April 29, 2014

Opinion 14-01

TO: The Honorable [redacted]

FROM: George T. Levesque

SUBJECT: Conflict of Interest

You have requested a formal opinion concerning a [redacted] over which you preside as an officer and board member. Presently, the [redacted] is going through the process of restructuring from a [redacted] institution into a [redacted] institution. You have inquired as to whether this transition would create any conflicts of interest or require additional disclosures under Florida law.

Based on our conversation and also upon my independent research, for the reasons stated below, I believe the conversion of your [redacted] into a [redacted] institution would not create any prohibited conflicts of interest, nor would it result in additional financial disclosure requirements.

Statement of Facts:

You are an elected member of the Florida Senate. You are the president of [redacted], a [redacted] and wholly-owned subsidiary of [redacted], a Florida corporation. You intend to convert [redacted] from a [redacted] into a [redacted]. Neither your [redacted] nor any of its parent corporations or subsidiaries employ lobbyists that represent the [redacted] interest before the Legislature.

Analysis:

Your situation raises two main potential conflicts of interest: conflicts in employment with and ownership of the [redacted] and voting conflicts requiring disclosure. Each potential conflict will be addressed in turn in the opinion below.

Section 112.313(7), Fla. Stat., provides:

> (7) 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.
>
> . . . .
>
> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

You are a Member of the Florida Senate, your "agency" for the purposes of this analysis. The first part of the provision prohibits you from being employed by or having a contractual relationship with any business entity that is subject to the regulation of, or doing business with the Legislature; however, subparagraph 2 provides an exception permitting such employments and contracts where the regulatory power is exercised through the passage of laws. The Commission on Ethics has consistently recognized this exception with respect to members of the Florida Legislature. *See e.g.* CEO 11-3, CEO 8-20, CEO 91-1, and CEO 90-8. Accordingly, I believe your continued ownership of [redacted] does not create a prohibited conflict of interest, even if its conversion into a [redacted] will render it subject to regulation by state legislation.

Given your position as a State Senator and your [redacted] potential interests before the Legislature, the question then arises as to what activities you may permissibly engage in, if any, related to matters that come before the Legislature that may impact your [redacted]. As a statutory matter, there is nothing in the Code of Ethics that proscribes your activities as a legislator in the legislative process, e.g., there is no statute that prohibits you from filing and voting on bills, engaging members, or meeting with constituents on matters that come before the Legislature. *Compare* § 112.3143(4), Florida Statutes (limiting an appointed public officer's participation in certain conflicts).

It is fundamental to a representative democracy that a citizen legislator be allowed to fully represent the interests of his or her constituents, notwithstanding the potential conflicts. Examining permissible activities, the Commission on Ethics has concluded that § 112.313(7), Florida Statutes, does not prohibit a State Senator's filing and supporting general and special legislation of interest to his domestic insurance company, where a Senator is the Chairman of the Senate Banking and Insurance Committee, and where a Senator is not compensated in any way by the company for his efforts as a member of the Legislature. S*ee* CEO 95-21; *see also* CEO 91-8 (State Representative who was an officer and shareholder of corporation engaged in the business of

developing detention facilities while serving on a corrections committee); CEO 03-11 (State Senator representing a hospital before county commissions while participating in legislation affecting that hospital); and CEO 81-12 (State Representative's participation in both general and special legislation affecting his client did not create an impermissible conflict of interest).[1] Based on these opinions, it would appear that you may meet with constituents and others related to legislation that may affect your employer, including legislation that may create a special private gain to your employer; however, for the reasons stated below, your legislative meetings may not involve or include your employer or lobbyists which represent your employer.

The Commission has treated the issue of lobbying differently than other types of employment and contractual conflicts. A member may not lobby the Legislature on behalf of an employer or client. Such activity would violate the prohibition on representation before state agencies as well as the provisions contained in § 112.313(7), Florida Statutes, which address frequently reoccurring conflicts. *See* CEO 03-3; 90-8. In situations where a state legislator's law firm was retained to lobby clients before the Legislature, the Commission recommended the following safeguards:

> (1) You do not lobby other members of the Legislature in behalf of your firm or its clients, or in regard to matters of concern to the firm or its clients.
> (2) Your income from your relationship with the firm, whether characterized as salary, profit-sharing, or some other item, must not flow from the firm's legislative lobbying activities or from fees or moneys paid the firm for lobbying or related activities. That is, your income or remuneration must come from your activities as a litigator before courts and local government bodies, from your other work unconnected to legislative lobbying, and from firm work unconnected to legislative lobbying; and it must not include bonuses, finders fees, or similar compensation, related to lobbying clients.
> (3) You must abstain from voting on or participating regarding claims bills concerning the firm or its clients.
> (4) You must not file any legislation for the firm or its clients.
> (5) You must disclose your firm's representation of clients before the Legislature (in order to reveal potential for conflict).
> (6) Your employment agreement with the firm prohibits members of the firm from lobbying you on behalf of any firm client.

CEO 03-3. Your situation is dramatically different from that of a law firm hired by a wide variety of clients, and neither your employer nor its parent corporation retains any lobbyists before the legislature. However, you should be scrupulous in refraining from any involvement with the legislative activities that may be orchestrated by your [redacted] or its parent corporation in the future. Further, though I do not believe it would be legally required, I would suggest that you not file legislation that relates to your [redacted] or its parent corporation so as to avoid any appearance that you are being compensated to act on your employer's behalf.

[1] There is no prohibition or restriction in law on a member's legislative advocacy activities. Section 112.3143, Fla. Stat., only requires a member to disclose conflicts, and when the conflict is personal to the member abstain from voting, unlike other prohibitions that extend to participation. If the Legislature had intended to expand the scope of the prohibition to advocacy, it could have done so.

As to financial reporting, converting [redacted] into a [redacted] will not create additional financial disclosure obligations. Under § 112.3145(5), Florida Statutes:

> (5) Each elected constitutional officer and each candidate for such office, any other public officer required pursuant to s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests, and each state officer, local officer, specified state employee, and candidate for elective public office who is or was during the disclosure period an officer, director, partner, proprietor, or agent, other than a resident agent solely for service of process, of, or owns or owned during the disclosure period a material interest in, any business entity which is granted a privilege to operate in this state shall disclose such facts as a part of the disclosure form filed pursuant to s. 8, Art. II of the State Constitution or this section, as applicable. The statement shall give the name, address, and principal business activity of the business entity and shall state the position held with such business entity or the fact that a material interest is owned and the nature of that interest.

Further, the definition of a "person or business entities provided a grant or privilege to operate" expressly includes both [redacted] and [redacted]. *See* § 112.312(19), Fla. Stat. Therefore, your financial disclosure obligations regarding your [redacted] will remain the same.

As for voting conflicts, it is impossible to say with certainty what may constitute a conflict of interest that requires disclosure at this time; however, I can provide this direction. You are obligated to vote on legislation that affects either your [redacted] or its parent corporation, and are required to disclose voting conflicts that create a special private gain or loss for them. *See* Senate Rule 1.20 (requiring every senator to vote on matters put forth before him or her unless required to abstain); see also § 112.3143, Fla Stat. As you begin to consider and cast your vote on legislation that comes before you, please keep these obligations in mind.

The above opinion is based upon facts that you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

I would be remiss if I did not provide some additional cautionary advice.

The Code of Ethics further provides that no member "shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties to secure a special privilege, benefit, or exemption for himself or others." *See* § 112.313(6), Fla. Stat. Moreover, a member "may not disclose or use information not available to members of the general public and gained by reason of his or her official position . . . for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity." *See* § 112.313(8), Fla Stat. While I am not aware of any facts that would indicate that these provisions are applicable to your situation, it would be prudent to keep these in mind. The law grants latitude to members based upon the recognition that they are part-time legislators that require outside employment and have lives outside their public office. That concept sometimes may get lost in public discourse, and what may be a legally tolerated conflict of interest may be viewed as inappropriate or corrupt in the court of public opinion.

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GEORGE LEVESQUE
General Counsel

April 29, 2014

OPINION 14-02

TO: The Honorable [redacted]

FROM: George T. Levesque

SUBJECT: Voting Conflict

You have asked whether your prior representation of a client whose deed was improperly notarized by an individual whose notary license may be revoked pursuant to action by the Florida Senate creates a conflict of interest requiring your abstention and disclosure of a voting conflict or, at a minimum, requiring a declaration of a voting conflict.

For the reasons stated below, I believe you need not declare a conflict of interest and must vote on the matter should it come before you in the Senate Chamber.

Statement of Facts:

You are an elected member of the Florida Senate and a member of the Ethics and Elections Committee. In your letter dated April 8, 2014, you indicate that from July 29, 2013, until February 18, 2014, you represented [redacted] in a foreclosure case from which you withdrew due to irreconcilable differences. You have not represented [redacted] since February 18, 2014, and are unsure whether you will represent him or an affiliated company in the future. You did not represent [redacted] at the time of the committee vote on the suspension of [redacted] notary license.

The committee vote occurred on April 8, 2014, relating to the suspension of a notary commission for [redacted] involving allegations of improper notarization of a deed for a commercial building to [redacted]. You are unsure whether the notarization in question involved any of your prior representation of [redacted].

Analysis:

Senate Rule 1.20 obligates every member to vote on each matter that comes before him or her within the Senate Chamber and in any committee meeting unless required to abstain due to a conflict of interest as provided by Senate Rule 1.39. Stated differently, unless a member *must*

abstain on a particular matter, the member *must* vote on that matter. *See also* § 112.3143(2)(a), Fla. Stat. ("A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss.").

Where a matter would personally inure to the special private gain or loss of the Senator, both an abstention and a disclosure would be required. See Senate Rule 1.39 and § 112.3143(2)(a), Fla. Stat. Where there is no special private gain or loss to the Senator, a Senator must vote on the matter and the Senator must disclose a conflict on any measure that the member knows would inure to the special private gain or loss of:

1. Any principal by whom the Senator or the Senator's spouse, parent, or child is retained or employed,
2. Any parent organization or subsidiary of a corporate principal by which the member is retained or employed, or
3. An immediate family member or business associate of the Senator.

See Senate Rule 1.39(2) and § 112.3143(2)(a), Fla. Stat. An "immediate family member" includes a Senator's parent, child, spouse, or sibling as well as a parent-in-law or child-in-law. *See* Senate Rule 1.39(2)(b) and § 112.3143(1)(c), Fla. Stat.

The Legislature has recently defined "special private gain or loss as:

> . . . 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.

Fla. Stat. § 112.3143(1)(d). Thus, it is not enough for a member or one of the member's conflict relations to receive a benefit or adverse impact from passage or non-passage of a measure. He or she must receive a *disproportionate impact* compared to the rest of those affected by the measure in a large class or be a part of a small impacted class.

Florida's voting conflict statute further defines "principal by whom retained" as "an individual or entity… 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…." § 112.3143(1)(a), Fla. Stat. The Commission on Ethics has construed this statute as applying only in the present tense, requiring a current relationship between the official and the affected persons or entities. *See* CEOs 09-9 and 06-5; *see also* CEO 78-96 (finding no prohibited conflict of interest where a city councilman voted on matters affecting potential clients of his real estate firm).

Under the rule and the statute, where such a conflict exists, the member must file a memorandum disclosing the nature of the conflict within 15 days after the vote. *See* Senate Rule 1.39(3) and § 112.3143(2)(a), Fla. Stat. For floor votes, the memorandum should be filed with the Secretary. For committee or subcommittee votes, the memorandum should be filed with the corresponding administrative assistant. *Id.*

In this instance, you indicate that your representation of [redacted] ceased on February 18, 2014. Because [redacted] was not your client at the time you voted — that is, on April 8, 2014 — he was not your principal and could not be the source of a voting conflict during your vote in the Ethics and Elections Committee. Assuming he is still not your principal, i.e. you still do not represent [redacted], during a floor vote, you will be obligated to vote on the matter and need not disclose any conflict.

The above opinion is based upon the facts you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information and my opinion may change accordingly.

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GEORGE LEVESQUE
General Counsel

March 24, 2015

OPINION 15-01

TO: The Honorable [redacted]

FROM: George T. Levesque, General Counsel
Michael Maida, Attorney

SUBJECT: Voting Conflict

You have asked for an opinion concerning a potential voting conflict over SPB 7060, a bill that would ratify Department of Environmental Protection rules relating to liners and leachate systems for construction and demolition debris disposal facilities.

For the reasons stated below, I believe you need not declare a conflict of interest and must vote on the matter should it come before you during a committee vote or in the Senate Chamber.

Facts:

You are an elected member of the Florida Senate. As part of a corporation of which you are a part-owner, you own a one-fifth stake in a Class I landfill and a one-fifth stake in a Class III landfill. One of the two landfills is classified as a construction and demolition debris disposal facility without a liner. You have also indicated that a permit was issued to the construction and demolition debris disposal facility prior to July 1, 2010.

Analysis:

Senate Rule 1.20 obligates every member to vote on each matter that comes before him or her within the Senate Chamber and in any committee meeting unless an abstention is required due to a conflict of interest as provided by Senate Rule 1.39. Stated differently, unless a member *must* abstain on a particular matter, the member *must* vote on that matter. *See also* § 112.3143(2)(a), Fla. Stat. ("A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss.").

Where a matter would personally inure to the special private gain or loss of the Senator, both an abstention and a disclosure are required. *See* Senate Rule 1.39 and § 112.3143(2)(a), Fla. Stat. Where there is no special private gain or loss to the Senator, a Senator must vote on the matter

and the Senator must disclose a conflict on any measure that the member knows would inure to the special private gain or loss of:

1. Any principal by whom the Senator or the Senator's spouse, parent, or child is retained or employed,
2. Any parent organization or subsidiary of a corporate principal by which the member is retained or employed, or
3. An immediate family member or business associate of the Senator.

See Senate Rule 1.39(2) and § 112.3143(2)(a), Fla. Stat.

SPB 7060, if enacted, would ratify Rule 62-701.730, F.A.C., entitled "Construction and Demolition Debris Disposal and Recycling," as filed for adoption with the Department of State. According to the Statement of Estimated Regulatory Cost, this new rule would effectuate section 403.707(9)(b), Florida Statutes, which directs the Florida Department of Environmental Protection to require liners and leachate collection systems at construction and demolition debris disposal facilities "that do not have a permit to… operate the disposal units prior to July 1, 2010…." *See also* § 403.707(9)(b), Fla. Stat.

The ratification of the Department of Environmental Protection's rule would impact only those particular facilities lacking liners and leachate collection systems that had not obtained a permit prior to July 1, 2010. Based upon the information you have provided, you are not a member of that class because your facility has been permitted to operate as a construction and demolition debris disposal facility prior to July 1, 2010, i.e., your facility is part of the grandfathered class. Because you are not a member of the class impacted by the bill, you are not affected in a manner contemplated by Florida Statutes or Senate Rules regarding forbidden conflicts of interests. Thus, you must vote on the matter should it come before you in a committee or in the Senate Chamber and need not disclose a conflict.

The above opinion is based upon the facts you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information and my opinion may change accordingly.

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GEORGE LEVESQUE
General Counsel

January 20, 2016

OPINION 16-01

TO: The Honorable [redacted]

FROM: George T. Levesque, General Counsel
Michael Maida, Attorney

SUBJECT: Voting Conflict

You have asked for an opinion concerning a potential voting conflict over Senate Bills 922 and 1052. These bills deal, in part, with the Florida Department of Environmental Protection ("FDEP") and Waste Management Facilities. For the reasons stated below, I believe you need not declare a conflict of interest on either, and must vote on the matters should they come before you during a committee vote or in the Senate Chamber.

Facts:

You are an elected member of the Florida Senate. As part of a corporation of which you are a part-owner, you own a one-fifth stake in a Class I landfill and a one-fifth stake in a Class III landfill.

Analysis:

Senate Rule 1.20 obligates every member to vote on each matter that comes before him or her within the Senate Chamber and in any committee meeting unless an abstention is required due to a conflict of interest as provided by Senate Rule 1.39. Stated differently, unless a member *must* abstain on a particular matter, the member *must* vote on that matter. *See also* § 112.3143(2)(a), Fla. Stat. ("A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss.").

Where a matter would personally inure to the special private gain or loss of the Senator, both an abstention and a disclosure are required. *See* Senate Rule 1.39 and § 112.3143(2)(a), Fla. Stat. Where there is no special private gain or loss to the Senator, a Senator must vote on the matter

and the Senator must disclose a conflict on any measure that the member knows would inure to the special private gain or loss of:

1. Any principal by whom the Senator or the Senator's spouse, parent, or child is retained or employed,
2. Any parent organization or subsidiary of a corporate principal by which the member is retained or employed, or
3. An immediate family member or business associate of the Senator.

See Senate Rule 1.39(2) and § 112.3143(2)(a), Fla. Stat.

Assuming, arguendo, that the bills create a special private gain or loss, the gain or loss would be to a corporation, not you directly. Because you would not directly realize the gain or loss, you must vote on the measure. The question then turns to whether there is a special private gain or loss that would require disclosure under the Code of Ethics and Senate Rules. In this scenario, the corporation would be considered your business associate.

SB 922, if enacted, would establish a waste tire abatement program, eliminate Florida's waste tire grant program, recreate and modify provisions related to the solid waste landfill closure account, and create other provisions related to the FDEP and the closure and long-term care of solid waste management facilities. Any economic impact created by this bill on the private sector is currently unknown.

SB 1052, if enacted, would—among other things—provide an appropriation for fiscal year 2016-2017 of $2,399,764 from the Solid Waste Management Trust Fund for the closure and long-term care of solid waste management facilities. The bill may create an indeterminable impact on rate payers if potable water supply systems must use more expensive treatment options in order to treat water from a Class III water body and if those costs are passed on to rate payers. It may also impact phosphate mine operators. Neither of these two situations appear to apply to you.

Based on my understanding of the bills and their impacts, it would appear that any gains or losses would be speculative at this time. In the absence of a knowable economic impact, you are unable to know that you would have a special private gain or loss in the manner contemplated by Florida Statutes or Senate Rules regarding forbidden conflicts of interests. Thus, you must vote on both matters should they come before you in a committee or in the Senate Chamber and need not disclose a conflict.

The above opinion is based upon the facts you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information and my opinion may change accordingly.

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Jeremiah M. Hawkes
General Counsel

MEMORANDUM

To: Senator [redacted]
From: Jeremiah M. Hawkes, General Counsel
Subject: Representation of Client before FCHR
Date: December 11, 2019

You have inquired whether you may handle representation of a client involving a complaint that has been filed with the Florida Commission on Human Relations (FCHR).

The answer is you may not personally represent for compensation a client before FCHR. The prohibition only applies to you personally, it does not apply to your law partners or your firm.

The facts presented are these. A client has retained your law firm to assist with filing a complaint with the FCHR pursuant to § 760.11(1), Florida Statutes. Once the complaint is filed, FCHR has 180 days to investigate the complaint. *See* § 760.11(3), Fla. Stat. There are then three possibilities:

1. The Commission can determine there is reasonable cause to believe that discriminatory practice has occurred;
2. The Commission can determine there is no reasonable cause; or
3. The Commission fails to conciliate or determine whether there is reasonable cause.

If (1) or (3) occurs, the complaintant can file a civil action or request an administrative hearing. *See* § 760.11(4) and (8), Fla. Stat. If (2) occurs, the complaintant can only request an administrative hearing. *See* § 760.11(7), Fla. Stat.

Section 112.313(9)(a)3.a., Florida Statutes, provides in relevant part: No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

For purposes of the ethics law, the term "agency" means "any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; any public school, community college, or state university; or any special district as defined in s. 189.012." § 112.312(2), Fla. Stat. FCHR is an agency for these purposes. *See* § 760.03, Fla. Stat.; *see also* CEO 03-10 (recognizing FCHR as an agency independent of the Department of Management Services).

There is an exception to the prohibition that authorizes a member of the Legislature to represent another person or entity for compensation during his or her term of office before judicial tribunals after the filing of a lawsuit. *See* § 112.313(9)(a)3.a., Fla. Stat. The term "judicial tribunal" is not defined in the Constitution or by statute. The Supreme Court has created what it refers to as the "predominant charateristics" test. *See Myers. v. Hawkins*, 362 So. 2d 926 (Fla. 1978). In order to be a judicial tribunal, an agency must "possess four basic hallmarks: proceedings which are adversary; an impartial group of decisionmakers; the power to issue final orders which the agency itself may enforce; and an identifiable standard of appellate review which tests for due process in the agency's decisional processes." *Id.* at 931. In *Myers* the Court held that the Public Service Commission did not meet this test because while some of its functions were quasi-judicial, many of its responsibilities were not.

No court or Ethics Commission Opinion has addressed whether FCHR or the Department of Administrative Hearing (DOAH) meets this standard. My opinion is that FCHR would not meet this test because, similar to the Public Service Commission, they have a number of functions other than holding hearings on complaints. *See* § 760.06, Fla. Stat.

My opinion is DOAH would also not meet this test. While proceedings in front of administrative law judges (ALJ) are adversarial, (§§ 120.569 and 120.57, Fla. Stat.), and ALJ's are impartial, (§ 120.65(1), Fla. Stat.), DOAH does not have the power to issue final orders under these circumstances. Instead an ALJ issues a recommended order for consideration by the FCHR. *See* § 760.11(6), Fla. Stat.

While a complaint is in the 180-day investigatory process, you are not authorized to represent the client because no judicial process has been initiatied. If a civil action is filed, then you could represent the client and handle any matters normally attendant to such representation even if the complaint is against a state agency.

If the complaintant elects to seek an administrative hearing under §§ 760.11(4) or (7), Florida Statutes, then you would not be able to represent the complaintant before DOAH or FCHR.

This is opinion is based on the facts as you presented them. If I have misunderstood any of the circumstances or you believe there are additional facts meriting consideration please let me know and I can modify this opinion accordingly.

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Jeremiah M. Hawkes
General Counsel

MEMORANDUM

To: The Honorable [redacted]
From: Jeremiah M. Hawkes, General Counsel
Justin Tamayo, Deputy General Counsel
Subject: Opinion– Privately-Sponsored Travel
Date: April 22, 2022

You have asked whether it is permissible under § 11.045, Fla. Stat., and § 112.3148, Fla. Stat., for you to participate in the American Israel Education Foundation (AIEF) Israel Seminar for Democratic Leaders (Event).

The Event is sponsored by AIEF, who state that, "Participants will hear a wide array of viewpoints, including discussions with: members of the Israeli Knesset and the Palestinian Authority; U.S. government officials; military leaders; heads of non-governmental organizations; and prominent academics and journalists."

Established in 1990, the AIEF is a 501(c)(3) non-profit organization that provides education and information about the relationship between the United States and Israel. AIEF is the charitable organization affiliated with the American Israel Public Affairs Committee (AIPAC). AIPAC is a 501(c)(4) organization. Neither organization is registered with the Florida Department of State as a political committee, nor retains an individual registered to lobby the Florida Legislature. So if you accepted this trip it would not be a prohibited expenditure under § 11.045 Fla. Stat.

Based upon these facts, it is my opinion that you may participate in the Event; however, while you may accept food, drink, and other items from the AIEF, § 112.3148, Fla. Stat., requires gifts in excess of $100 to be reported. Therefore, any food, drink, travel, lodging, et cetera may constitute a gift that would need to be reported to the extent the value exceeds $100. For the purposes of of calculating the value of the gifts, if the trip includes transportation, lodging, recreational or entertainment expenses paid by the donor, the value of the gift is equal to the total

value of the various aspects of the trip minus any consideration paid by the donee. Rule 34-13.500(3), Florida Administrative Code.

This information must be included in your Quarterly Gift Disclosure (Florida Commission on Ethics, Form 9), which must be postmarked by midnight Sept. 30th, as the trip is scheduled to take place July 23-21, 2022. If AIEF provides a receipt for the expenses of the trip, a copy of that receipt must be included with the Form 9.

The above opinion is based on facts that you have provided. If the situation you outlined is materially different than the facts stated or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

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Carlos Rey
General Counsel

MEMORANDUM

OPINION 23-01

To: [redacted]

From: Carlos Rey, General Counsel
Kyle Gray, Deputy General Counsel

Subject: Opinion – Honorary Degrees

Date: February 10, 2023

You have asked whether it is permissible for you to accept an honorary degree from the [redacted].

Section (1)(b), Senate Rules Appendix A, and Section 11.045(1)(i), F.S., defines a "principal" as a person, firm, corporation, or other entity that has employed or retained a lobbyist. Principals and lobbyists are prohibited from making and members are prohibited from knowingly accepting, directly or indirectly, any expenditure, except for floral arrangements or celebratory items displayed in chambers on opening day of regular session. §11.045(4)(a), F.S. An "expenditure" is defined as a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. §11.045(1)(c), F.S.

Outside of opening day, there are other instances when an expenditure may be accepted by a member. An expenditure for which a monetary value is not ascertainable at the time of the expenditure is not prohibited. §(1)(g)9., *Senate Rules Appendix A.* Also, "[t]he prohibition does not apply to personalized wall plaques, personalized photographs, or personalized certificates that have no substantial inherent value other than recognizing the donee's public, civic, charitable, or professional service." §(1)(g)10., *Senate Rules Appendix A.*

UCF retains individuals to lobby the Florida legislature. By retaining lobbyists, UCF is therefore a principal under both Section 11.045 and the Senate Rules and thus prohibited from making any expenditures to a member of the Legislature. *See* §§(1)(a), (1)(b), *Senate Rules Appendix A* and §11.045(4)(a), F.S. In this instance though, the issuance of an honorary degree would fall under

the two aforementioned exceptions for expenditures. Based on the facts and circumstances known to us, there does not appear to be any ascertainable monetary value to the honorary degree, which, unlike a typical higher education degree, is not awarded in connection with the completion of appropriate courses and after the payment of any applicable tuition. Instead, honorary degrees are awarded at the discretion of the university or college to individuals for the purpose of recognizing that person's civic, charitable, or professional services to the community. Accordingly, such a degree is akin to a personalized certificate with no substantial inherent value other than recognizing your public, civic, or professional service. Therefore, your acceptance of the honorary degree from UCF would fall within the two exceptions to the Senate Rules outlined above.

Based upon these facts, it is my opinion that you may accept the honorary degree from UCF.

The above opinion is based on facts that you have provided. If the situation you outlined is materially different than the facts stated or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

THE FLORIDA SENATE

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Carlos Rey
General Counsel

MEMORANDUM

OPINION 23-01

To: [redacted]

From: Carlos Rey, General Counsel
Kyle Gray, Deputy General Counsel

Subject: Opinion – Honorary Degrees

Date: February 10, 2023

You have asked whether it is permissible for you to accept an honorary degree from [redacted].

Section (1)(b), Senate Rules Appendix A, and Section 11.045(1)(i), F.S., defines a "principal" as a person, firm, corporation, or other entity that has employed or retained a lobbyist. Principals and lobbyists are prohibited from making and members are prohibited from knowingly accepting, directly or indirectly, any expenditure, except for floral arrangements or celebratory items displayed in chambers on opening day of regular session. §11.045(4)(a), F.S. An "expenditure" is defined as a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. §11.045(1)(c), F.S.

Outside of opening day, there are other instances when an expenditure may be accepted by a member. An expenditure for which a monetary value is not ascertainable at the time of the expenditure is not prohibited. §(1)(g)9., *Senate Rules Appendix A*. Also, "[t]he prohibition does not apply to personalized wall plaques, personalized photographs, or personalized certificates that have no substantial inherent value other than recognizing the donee's public, civic, charitable, or professional service." §(1)(g)10., *Senate Rules Appendix A.*

[redacted] retains individuals to lobby the Florida legislature. By retaining lobbyists, [redacted] is therefore a principal under both Section 11.045 and the Senate Rules and thus prohibited from making any expenditures to a member of the Legislature. *See* §§(1)(a), (1)(b), *Senate Rules Appendix A* and §11.045(4)(a), F.S. In this instance though, the issuance of an honorary degree would fall under

the two aforementioned exceptions for expenditures. Based on the facts and circumstances known to us, there does not appear to be any ascertainable monetary value to the honorary degree, which, unlike a typical higher education degree, is not awarded in connection with the completion of appropriate courses and after the payment of any applicable tuition. Instead, honorary degrees are awarded at the discretion of the university or college to individuals for the purpose of recognizing that person's civic, charitable, or professional services to the community. Accordingly, such a degree is akin to a personalized certificate with no substantial inherent value other than recognizing your public, civic, or professional service. Therefore, your acceptance of the honorary degree from [redacted] would fall within the two exceptions to the Senate Rules outlined above.

Based upon these facts, it is my opinion that you may accept the honorary degree from [redacted].

The above opinion is based on facts that you have provided. If the situation you outlined is materially different than the facts stated or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

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Carlos Rey
General Counsel

February 20, 2023

OPINION 23-02

To: [redacted]

From: Carlos Rey, General Counsel
Kyle Gray, Deputy General Counsel

Subject: Opinion– Serving on Insurance Board

You have asked for an opinion addressing potential conflicts of interest related to a prospective position you are considering as board member of an insurance company ("the Company").

Based on our conversations, the following facts are relevant to the analysis: You are considering investing in the Company and serving on its board of directors. You will hold less than 5% interest in the Company. The Company will be retaining a lobbyist to lobby the Legislature. The Company will be providing insurance policies in the open market and will not be engaging in any contracts with the State of Florida. Your duties will not include lobbying efforts, and your compensation will in no way be associated with your legislative efforts as a State Senator.

For the reasons stated below, I do not believe your partial ownership of the Company or serving on its board of directors will create a continuing or frequently recurring conflict or impediment to your public duties.

Analysis

Your situation raises two main potential conflicts of interest: conflicts in employment with and ownership of the Company and voting conflicts requiring disclosures. Each potential conflict will be addressed in turn in the opinion below.

Section 112.313(7), Fla. Stat., provides:

> (7) 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.
>
> . . . .
>
> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

You are a Member of the Florida Senate, your "agency" for the purposes of this analysis. The first part of the provision prohibits you from being employed by or having a contractual relationship with any business entity which is subject to the regulation of, or doing business with the Legislature; however, subparagraph 2 provides an exception permitting such employment and contracts where the regulatory power is exercised through the passage of laws. The Commission on Ethics has consistently recognized this exception with respect to members of the Florida Legislature. *See e.g.* CEO 11-3, CEO 08-20, CEO 91-1, and CEO 90-8. Accordingly, I believe it is acceptable for you to accept employment with the Company.

Nevertheless, the Commission has concluded that the exception created by subparagraph 2 does not resolve all conflicts. *See* CEO 91-1. The second part of paragraph (a) prohibits you from having any employment or contractual relationship that will create a continuing and frequently recurring conflict between your private interests and the performance of your public duties, or that would impede the full and faithful discharge of your public duties.

> This prohibition 'establishes an objective standard which requires an examination of the nature and extent of the public officer's duties together with a review of his private employment to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which "tempts dishonor."' Zerweck v. State Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4th DCA 1982). . . . .
>
> We recognize that all employers in this state are affected by the laws enacted by the Legislature. Further, we recognize that some employers contribute to and join organizations which seek to represent their common interests before the Legislature. Still other employers, including many public agencies, professional associations, and large corporations, maintain a lobbying presence at each legislative session in order to advance their interests. As the members of our Legislature are expected to serve as citizen-legislators on a part-time basis and must be employed elsewhere to support themselves and their families, each of these situations presents the potential for conflicts of interest.

CEO 91-1. For example, in CEO 06-12 the Commission advised the incoming president of the Florida Association of Realtors that a conflict under § 112.313(7)(a), Fla. Stat., would be created were she to serve in the House since she would be the 'face' of the organization, would be its highest ranking member, and would have significant legislative duties as its president. Likewise, in CEO 06-19 the Commission advised a Member of the House that a prohibited conflict of interest would be created under this section if he were to work for Waste Management Corporation as its Manager of Community and Municipal Relations, reasoning that the two positions – that of legislator and that of consultant – would be indistinguishable to others and himself, based upon the list of duties he disclosed about the employment. I find these two opinions inapplicable to your situation, yet cautionary.

As a statutory matter, there is nothing in the Code of Ethics that expressly proscribes your activities as a legislator in the legislative process, i.e., there is no statute that prohibits you from filing and voting on bills, engaging members, or meeting with constituents on matters that come before the Legislature. *Compare* § 112.3143(4), Fla. Stat. (limiting an appointed public officer's participation in certain conflicts).

It is fundamental to a representative democracy that a citizen legislator be allowed to fully represent the interests of his or her constituents, notwithstanding the potential conflicts. Examining permissible activities, the Commission on Ethics has concluded that § 112.313(7), Fla. Stat., does not prohibit a State Senator's filing and supporting general and special legislation of interest to his private law client, where a Senator is not compensated in any way by the client for his efforts as a member of the Legislature. *See* CEO 03-11; *see also* CEO 91-8 (State Representative who was an officer and shareholder of corporation engaged in the business of developing detention facilities while serving on a corrections committee); CEO 95-21 (State Senator chairing banking and insurance committee while serving as director of insurance company); and CEO 81-12 (State Representative's participation in both general and special legislation affecting his client did not create an impermissible conflict of interest).[1] Based on these opinions, it would appear that you may meet with constituents and others and participate in legislation on matters that may affect the Company.

You must also be mindful of the restrictions in Article II, Section 8(e) of the Florida Constitution and § 112.313(9)(a)3., Fla. Stat., which preclude a legislator's compensated representation of a person or entity before a state agency during his or her term other than before judicial tribunals or in settlement negotiations after the filing of a lawsuit. However, it appears that your service as a board member of the Company would not violate these restrictions based on the facts you have provided us. You have stated that the Company will retain a lobbyist to lobby the Legislature. However, you have stated that neither you nor any other director have been retained to lobby the Legislature, that as a director you will have no involvement in any lobbying efforts, that lobbying will be part of the administrative functions of the Company, and that there will be no interface between the directors and the lobbying efforts. Based on these facts, your service on the board will not pose a continuing or frequently recurring conflict or impediment to your public duties, in violation of the second part of § 112. 313(7)(a), Fla. Stat., nor will it violate the restrictions in Article II, Section 8(e) of the Florida Constitution or § 112.313(9)(a)3., Fla. Stat. *See* CEO 95-21

[1] There is no prohibition or restriction in law on a member's legislative advocacy activities. Section 112.3143, Florida Statutes, only requires a member to disclose conflicts, unlike other prohibitions that extend to participation. If the Legislature had intended to expand the scope of the prohibition to advocacy, it could have done so.

and CEO 03-11. As a reminder, you should be scrupulous in refraining from any involvement with the legislative lobbying activities that are orchestrated by your Company.

As for voting conflicts, you would still be obligated to vote on legislation that affects the Company, and would be required to disclose voting conflicts that create a special private gain or loss for the Company. *See* Senate Rule 1.20 (requiring every senator to vote on matters put before him or her unless required to abstain); and Senate Rule 1.39 (setting forth voting conflicts which require disclosure). This requirement would apply regardless of whether the Company is represented before the Legislature.

It is impossible to assess whether voting conflicts exist at this time. Such an analysis requires an examination of the specific matter pending before you, and the facts potentially giving rise to the conflict. In the present case, the principal would be the Company. Determining how the legislation affects the Company would be required as prerequisite to assessing whether a voting conflict exists which would require disclosure. As you begin to consider and cast your vote on legislation that comes before you, please keep these obligations in mind.

The above opinion is based upon facts which you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

I would be remiss if I did not provide some additional cautionary advice.

The Code of Ethics further provides that no member "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 official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others." *See* § 112.313(6), Fla. Stat. Moreover, no member shall “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." *See* § 112.313(8), Fla. Stat. While I am not aware of any facts which would indicate that these provisions are applicable to your situation, it would be prudent to keep these in mind. The law grants latitude to members based upon the recognition that they are part-time legislators that require outside employment and have lives outside their public office. That concept sometimes may get lost in public discourse, and what may be a legally-tolerated conflict of interest may be viewed as inappropriate or corrupt in the court of public opinion.

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Carlos Rey
General Counsel

February 26, 2024

OPINION 24-01

To: [redacted]

From: Carlos Rey, General Counsel
Oliver Thomas, Deputy General Counsel

Subject: Opinion– Conflict between employment and legislative activities

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You have asked for an opinion addressing potential conflicts of interest related to your position as a consultant for a healthcare provider ("the Company").

Based on our conversations, the following facts are relevant to the analysis: You currently serve as a consultant helping the Company in the development of new business. You have assisted the Company leadership with project-based services related to greenfield and brownfield growth opportunities. You also represented the Company with facilitating preferred provider agreements focused on developing a partnership between the Company and the payers. You also advised, guided, and supported the senior leadership on key strategic priorities. Your duties did not include lobbying efforts, and your compensation is in no way associated with your legislative efforts as a State Senator.

For the reasons stated below, I do not believe your employment as a consultant with the Company creates a continuing or frequently recurring conflict or impediment to your public duties.

Analysis

Your situation raises two main potential conflicts of interest: conflicts in employment with the Company and voting conflicts requiring disclosures. Each potential conflict will be addressed in turn in the opinion below.

Section 112.313(7), Fla. Stat., provides:

> (7) 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.
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> . . . .
>
> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

You are a Member of the Florida Senate, your "agency" for the purposes of this analysis. The first part of the provision prohibits you from being employed by or having a contractual relationship with any business entity which is subject to the regulation of, or doing business with the Legislature; however, subparagraph 2 provides an exception permitting such employment and contracts where the regulatory power is exercised through the passage of laws. The Commission on Ethics has consistently recognized this exception with respect to members of the Florida Legislature. *See e.g.* CEO 11-3, CEO 08-20, CEO 91-1, and CEO 90-8. Accordingly, I believe it is acceptable for you to accept employment with the Company.

Nevertheless, the Commission has concluded that the exception created by subparagraph 2 does not resolve all conflicts. *See* CEO 91-1. The second part of paragraph (a) prohibits you from having any employment or contractual relationship that will create a continuing and frequently recurring conflict between your private interests and the performance of your public duties, or that would impede the full and faithful discharge of your public duties.

> This prohibition 'establishes an objective standard which requires an examination of the nature and extent of the public officer's duties together with a review of his private employment to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which "tempts dishonor."' Zerweck v. State Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4th DCA 1982). . . . .
>
> We recognize that all employers in this state are affected by the laws enacted by the Legislature. Further, we recognize that some employers contribute to and join organizations which seek to represent their common interests before the Legislature. Still other employers, including many public agencies, professional associations, and large corporations, maintain a lobbying presence at each legislative session in order to advance their interests. As the members of our Legislature are expected to serve as citizen-legislators on a part-time basis and must be employed

> elsewhere to support themselves and their families, each of these situations presents the potential for conflicts of interest.

CEO 91-1. For example, in CEO 06-12 the Commission advised the incoming president of the Florida Association of Realtors that a conflict under § 112.313(7)(a), Fla. Stat., would be created were she to serve in the House since she would be the 'face' of the organization, would be its highest ranking member, and would have significant legislative duties as its president. Likewise, in CEO 06-19 the Commission advised a Member of the House that a prohibited conflict of interest would be created under this section if he were to work for Waste Management Corporation as its Manager of Community and Municipal Relations, reasoning that the two positions – that of legislator and that of consultant – would be indistinguishable to others and himself, based upon the list of duties he disclosed about the employment. I find these two opinions inapplicable to your situation, yet cautionary.

As a statutory matter, there is nothing in the Code of Ethics that expressly proscribes your activities as a legislator in the legislative process, i.e., there is no statute that prohibits you from filing and voting on bills, engaging members, or meeting with constituents on matters that come before the Legislature. *Compare* § 112.3143(4), Fla. Stat. (limiting an appointed public officer's participation in certain conflicts).

It is fundamental to a representative democracy that a citizen legislator be allowed to fully represent the interests of his or her constituents, notwithstanding the potential conflicts. Examining permissible activities, the Commission on Ethics has concluded that § 112.313(7), Fla. Stat., does not prohibit a State Senator's filing and supporting general and special legislation of interest to his private law client, where a Senator is not compensated in any way by the client for his efforts as a member of the Legislature. *See* CEO 03-11; *see also* CEO 91-8 (State Representative who was an officer and shareholder of corporation engaged in the business of developing detention facilities while serving on a corrections committee); CEO 95-21 (State Senator chairing banking and insurance committee while serving as director of insurance company); and CEO 81-12 (State Representative's participation in both general and special legislation affecting his client did not create an impermissible conflict of interest).[1] Based on these opinions, it would appear that you may meet with constituents and others and participate in legislation on matters that may affect the Company.

You must also be mindful of the restrictions in Article II, Section 8(e) of the Florida Constitution and § 112.313(9)(a)3., Fla. Stat., which preclude a legislator's compensated representation of a person or entity before a state agency during his or her term other than before judicial tribunals or in settlement negotiations after the filing of a lawsuit. However, it appears that your employment as a consultant of the Company would not violate these restrictions based on the facts you have provided us. The Company retains a lobbyist to lobby the Legislature. However, you have stated that you have not been retained to lobby the Legislature, that as a consultant you will have no involvement in any lobbying efforts, that lobbying will be part of the administrative functions of the Company, and that there will be no interface between you and the lobbying efforts. Based on these facts, your employment as a consultant not pose a continuing or frequently recurring conflict or impediment to your public duties, in violation of the second part of § 112. 313(7)(a), Fla. Stat., nor will it violate the restrictions in Article II, Section 8(e) of the Florida Constitution or §

[1] There is no prohibition or restriction in law on a member's legislative advocacy activities. Section 112.3143, Florida Statutes, only requires a member to disclose conflicts, unlike other prohibitions that extend to participation. If the Legislature had intended to expand the scope of the prohibition to advocacy, it could have done so.

112.313(9)(a)3., Fla. Stat. *See* CEO 95-21 and CEO 03-11. As a reminder, you should be scrupulous in refraining from any involvement with the legislative lobbying activities that are orchestrated by your Company.

As for voting conflicts, you would still be obligated to vote on legislation that affects the Company, and would be required to disclose voting conflicts that create a special private gain or loss for the Company. *See* Senate Rule 1.20 (requiring every senator to vote on matters put before him or her unless required to abstain); and Senate Rule 1.39 (setting forth voting conflicts which require disclosure). This requirement would apply regardless of whether the Company is represented before the Legislature.

It is impossible to assess whether voting conflicts exist at this time. Such an analysis requires an examination of the specific matter pending before you, and the facts potentially giving rise to the conflict. In the present case, the principal would be the Company. Determining how the legislation affects the Company would be required as prerequisite to assessing whether a voting conflict exists which would require disclosure. As you begin to consider and cast your vote on legislation that comes before you, please keep these obligations in mind.

The above opinion is based upon facts which you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

I would be remiss if I did not provide some additional cautionary advice.

The Code of Ethics further provides that no member "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 official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others." *See* § 112.313(6), Fla. Stat. Moreover, no member shall “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." *See* § 112.313(8), Fla. Stat. While I am not aware of any facts which would indicate that these provisions are applicable to your situation, it would be prudent to keep these in mind. The law grants latitude to members based upon the recognition that they are part-time legislators that require outside employment and have lives outside their public office. That concept sometimes may get lost in public discourse, and what may be a legally-tolerated conflict of interest may be viewed as inappropriate or corrupt in the court of public opinion.

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Carlos Rey
General Counsel

February 27, 2024

OPINION 24-02

To: [redacted]

From: Carlos Rey, General Counsel
Kyle Gray, Deputy General Counsel

Subject: Opinion– Privately-Sponsored Travel

You have asked whether it is permissible under § 11.045, Fla. Stat., and § 112.3148, Fla. Stat., for you to participate in the American Israel Education Foundation (AIEF) Israel Seminar for Republican Leaders (Event).

Established in 1990, the AIEF is a 501(c)(3) non-profit organization that provides education and information about the relationship between the United States and Israel. AIEF is the charitable organization affiliated with the American Israel Public Affairs Committee (AIPAC). AIPAC is a 501(c)(4) organization. Neither organization is registered with the Florida Department of State as a political committee, nor retains an individual registered to lobby the Florida Legislature. So if you accepted this trip it would not be a prohibited expenditure under § 11.045 Fla. Stat.

Based upon these facts, it is my opinion that you may participate in the Event; however, while you may accept food, drink, and other items from the AIEF, § 112.3148, Fla. Stat., requires gifts in excess of $100 to be reported. Therefore, any food, drink, travel, lodging, et cetera may constitute a gift that would need to be reported to the extent the value exceeds $100. For the purposes of calculating the value of the gifts, if the trip includes transportation, lodging, recreational or entertainment expenses paid by the donor, the value of the gift is equal to the total value of the various aspects of the trip minus any consideration paid by the done. Rule 34-13.500(3), Florida Administrative Code.

This information must be included in your Quarterly Gift Disclosure (Florida Commission on Ethics, Form 9), which must be postmarked by midnight June 30th, as the trip is scheduled to take place May 18 – 26, 2024. If AIEF provides a receipt for the expenses of the trip, a copy of that receipt must be included with the Form 9.

The above opinion is based on facts that you have provided. If the situation you outlined is materially different than the facts stated or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

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Carlos Rey
General Counsel

June 6, 2024

OPINION 24-03

To: [redacted]

From: Carlos Rey, General Counsel
Oliver Thomas, Deputy General Counsel

Subject: Opinion– Privately-Sponsored Travel

You have asked whether it is permissible under § 11.045, Fla. Stat., and § 112.3148, Fla. Stat., for you to participate in the American Israel Education Foundation (AIEF) Israel Seminar for Florida, New York, and Southwest Political Leaders (Event).

The Event is sponsored by AIEF, who state that, "This seminar will delve into the critical issues facing Israel in the wake of the October 7 massacre, including: the ongoing Israel-Hamas war; security threats confronting Israel on its northern border; and the threat posed by a nuclear Iran. Participants will hear a wide array of viewpoints, including discussions with: members of the Israeli Knesset and the Palestinian Authority; U.S. government officials; military leaders; heads of non-governmental organizations; and prominent academics and journalists."

Established in 1990, the AIEF is a 501(c)(3) non-profit organization that provides education and information about the relationship between the United States and Israel. AIEF is the charitable organization affiliated with the American Israel Public Affairs Committee (AIPAC). AIPAC is a 501(c)(4) organization. Neither organization is registered with the Florida Department of State as a political committee, nor retains an individual registered to lobby the Florida Legislature. So if you accepted this trip it would not be a prohibited expenditure under § 11.045 Fla. Stat.

Based upon these facts, it is my opinion that you may participate in the Event; however, while you may accept food, drink, and other items from the AIEF, § 112.3148, Fla. Stat., requires gifts in excess of $100 to be reported. Therefore, any food, drink, travel, lodging, et cetera may constitute a gift that would need to be reported to the extent the value exceeds $100. For the purposes of calculating the value of the gifts, if the trip includes transportation, lodging, recreational or entertainment expenses paid by the donor, the value of the gift is equal to the total value of the various aspects of the trip minus any consideration paid by the done. Rule 34-13.500(3), Florida Administrative Code.

This information must be included in your Quarterly Gift Disclosure (Florida Commission on Ethics, Form 9), which must be postmarked by midnight June 30th, as the trip is scheduled to take place June 22 – 30, 2024. If AIEF provides a receipt for the expenses of the trip, a copy of that receipt must be included with the Form 9.

The above opinion is based on facts that you have provided. If the situation you outlined is materially different than the facts stated or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

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Carlos Rey
General Counsel

July 25, 2024

OPINION 24-04

To: [redacted]

From: Carlos Rey, General Counsel
Oliver Thomas, Deputy General Counsel

Subject: Opinion– Conflict between employment and legislative activities

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You have asked for an opinion addressing potential conflicts of interest related to your position as a consultant for [redacted] ("the Company").

Based on our conversations, the following facts are relevant to the analysis: The Company has extended to you the opportunity to serve as an independent contractor assisting with communication and development strategies. The draft contract you provided defines your duties as the following:

- Develop and execute advocacy strategies aligned with the Company's mission, focusing on behavioral health, primary care services and affordable housing development. This does not include prohibited lobbying or representation of the Company before with any state agency or elected official.
- Develop media relations, leveraging storytelling and creative campaigns to elevate the Company's presence and messaging, as needed.
- Work with communications team to enhance the Company's presence in the general market and [redacted] media to effectively communicate advocacy efforts.
- Stay informed of industry trends and best practices to enhance the Company's advocacy and community affairs strategies.
- Assist in design of capital campaign for develop of affordable housing and services expansion.
- Assist CEO and management with communications with Hospitals, clinics, and health facilities to develop referral relationships.

For the reasons stated below, I do not believe your employment as an independent contractor with the Company creates a continuing or frequently recurring conflict or impediment to your public duties.

Analysis

Based on the facts provided, this opinion will discuss potential conflicts in employment with the Company and potential voting conflicts requiring disclosures. Each potential conflict will be addressed in turn in the opinion below. There will also be discussion on avoiding potential misuse of your public office while employed with the Company.

Conflict in Employment

Section 112.313(7), Fla. Stat., provides:

> (7) 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.
> . . . .
> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

You are a Member of the Florida Senate, your "agency" for the purposes of this analysis. The first part of the provision prohibits you from being employed by or having a contractual relationship with any business entity which is subject to the regulation of, or doing business with the Legislature; however, subparagraph 2 provides an exception permitting such employment and contracts where the regulatory power is exercised through the passage of laws. The Commission on Ethics has consistently recognized this exception with respect to members of the Florida Legislature. *See e.g.* CEO 11-3, CEO 08-20, CEO 91-1, and CEO 90-8. Accordingly, I believe it is acceptable for you to accept employment with the Company.

Nevertheless, the Commission has concluded that the exception created by subparagraph 2 does not resolve all conflicts. *See* CEO 91-1. The second part of paragraph (a) prohibits you from having any employment or contractual relationship that will create a continuing and frequently recurring conflict between your private interests and the performance of your public duties, or that would impede the full and faithful discharge of your public duties.

> This prohibition 'establishes an objective standard which requires an examination of the nature and extent of the public officer's duties together with a review of his private employment to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which "tempts dishonor."' Zerweck v. State Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4th DCA 1982). . . . .
>
> We recognize that all employers in this state are affected by the laws enacted by the Legislature. Further, we recognize that some employers contribute to and join organizations which

> seek to represent their common interests before the Legislature. Still other employers, including many public agencies, professional associations, and large corporations, maintain a lobbying presence at each legislative session in order to advance their interests. As the members of our Legislature are expected to serve as citizen-legislators on a part-time basis and must be employed elsewhere to support themselves and their families, each of these situations presents the potential for conflicts of interest.

CEO 91-1. For example, in CEO 06-12 the Commission advised the incoming president of the Florida Association of Realtors that a conflict under § 112.313(7)(a), Fla. Stat., would be created were she to serve in the House since she would be the 'face' of the organization, would be its highest ranking member, and would have significant legislative duties as its president. Likewise, in CEO 06-19 the Commission advised a Member of the House that a prohibited conflict of interest would be created under this section if he were to work for Waste Management Corporation as its Manager of Community and Municipal Relations, reasoning that the two positions – that of legislator and that of consultant – would be indistinguishable to others and himself, based upon the list of duties he disclosed about the employment. I find these two opinions inapplicable to your situation, yet cautionary.

As a statutory matter, there is nothing in the Code of Ethics that expressly proscribes your activities as a legislator in the legislative process, i.e., there is no statute that prohibits you from filing and voting on bills, engaging members, or meeting with constituents on matters that come before the Legislature. *Compare* § 112.3143(4), Fla. Stat. (limiting an appointed public officer's participation in certain conflicts).

It is fundamental to a representative democracy that a citizen legislator be allowed to fully represent the interests of his or her constituents, notwithstanding the potential conflicts. Examining permissible activities, the Commission on Ethics has concluded that § 112.313(7), Fla. Stat., does not prohibit a State Senator's filing and supporting general and special legislation of interest to his private law client, where a Senator is not compensated in any way by the client for his efforts as a member of the Legislature. *See* CEO 03-11; *see also* CEO 91-8 (State Representative who was an officer and shareholder of corporation engaged in the business of developing detention facilities while serving on a corrections committee); CEO 95-21 (State Senator chairing banking and insurance committee while serving as director of insurance company); and CEO 81-12 (State Representative's participation in both general and special legislation affecting his client did not create an impermissible conflict of interest).[1] Based on these opinions, it would appear that you may meet with constituents and others and participate in legislation on matters that may affect the Company.

You must also be mindful of the restrictions in Article II, Section 8(e) of the Florida Constitution and § 112.313(9)(a)3., Fla. Stat., which preclude a legislator's compensated representation of a person or entity before a state agency during his or her term other than before judicial tribunals or in settlement negotiations after the filing of a lawsuit. However, it appears that your employment as an independent contractor of the Company would not violate these restrictions based on the facts you have provided us. The Company retains a lobbyist to lobby the Legislature. However, you have stated that you have not been retained to lobby the Legislature, that as an independent contractor you will have no involvement in any lobbying efforts, that lobbying will be part of the

[1] There is no prohibition or restriction in law on a member's legislative advocacy activities. Section 112.3143, Florida Statutes, only requires a member to disclose conflicts, unlike other prohibitions that extend to participation. If the Legislature had intended to expand the scope of the prohibition to advocacy, it could have done so.

administrative functions of the Company, and that there will be no interface between you and the lobbying efforts. Based on these facts, your employment as an independent contractor does not pose a continuing or frequently recurring conflict or impediment to your public duties, in violation of the second part of § 112. 313(7)(a), Fla. Stat., nor will it violate the restrictions in Article II, Section 8(e) of the Florida Constitution or § 112.313(9)(a)3., Fla. Stat. *See* CEO 95-21 and CEO 03-11. As a reminder, you should be scrupulous in refraining from any involvement with the legislative lobbying activities that are orchestrated by your Company.

Voting Conflicts

As for voting conflicts, you would still be obligated to vote on legislation that affects the Company, and would be required to disclose voting conflicts that create a special private gain or loss for the Company. *See* Senate Rule 1.20 (requiring every senator to vote on matters put before him or her unless required to abstain); and Senate Rule 1.39 (setting forth voting conflicts which require disclosure). This requirement would apply regardless of whether the Company is represented before the Legislature.

It is impossible to assess whether voting conflicts exist at this time. Such an analysis requires an examination of the specific matter pending before you, and the facts potentially giving rise to the conflict. In the present case, the principal would be the Company. Determining how the legislation affects the Company would be required as prerequisite to assessing whether a voting conflict exists which would require disclosure. As you begin to consider and cast your vote on legislation that comes before you, please keep these obligations in mind.

The above opinion is based upon facts which you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

I would be remiss if I did not provide some additional cautionary advice.

Misuse of Public Office

The Code of Ethics further provides that no member "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 official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others." *See* § 112.313(6), Fla. Stat. Moreover, no member shall “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." *See* § 112.313(8), Fla. Stat. While I am not aware of any facts which would indicate that these provisions are applicable to your situation, it would be prudent to keep these in mind. The law grants latitude to members based upon the recognition that they are part-time legislators that require outside employment and have lives outside their public office. That concept sometimes may get lost in public discourse, and what may be a legally-tolerated conflict of interest may be viewed as inappropriate or corrupt in the court of public opinion.