

CEO 04-8 – April 27, 2004

FINANCIAL DISCLOSURE

CORRECT REPORTING OF INCOME WHEN MAKING FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS

To: Name withheld at person's request

SUMMARY:

Where a reporting individual who files CE Form 6, Full and Public Disclosure of Financial Interests, declines to take payment of his salary in full, he should report as income the amount actually received from his employer. If that amount is not known or is unavailable, a good faith estimate or explanatory annotation to the Form 6 will satisfy the reporting requirement.

QUESTION:

What is the correct way for a member of the Legislature to report his income where he has declined to accept salary for days he spent engaged in legislative session or district duties?

Your question is answered as follows.

In your letter of inquiry you advise that you are a member of the Florida House of Representatives. In private employment, you serve as the Deputy Director of the Technological Research and Development Authority (TRDA). You state that you chose not to accept pay from this employment for time you spent "serving in legislative session, the many special sessions or other legislative district duties." You write that your retirement benefits, 401K calculations, and vacation and sick leave were all based on your full salary, rather than the amount you were actually paid, and that this treatment was similar to the manner in which the TRDA treats "other public servant employees such as National Guard or other extended leave individuals." As a member of the Legislature, you are required to file Form 6 Full and Public Financial Disclosure, and you wish to know the correct manner in which to report your income from the TRDA.

Article II, Section 8(a), Florida Constitution, provides in relevant part:

All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

This subsection presently is implemented by subsection (i), the schedule of the amendment, which provides in pertinent part:

Schedule -- On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the secretary of state by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

a. A copy of the person's most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.

In interpreting this provision, we promulgated Rule 34-8.006(2), F.A.C., which states that reporting officials choosing to file a sworn statement disclosing sources and amounts of income instead of attaching their federal income tax returns "shall follow federal income tax principles" in reporting. See, CEO 77-99. The instructions to the CE Form 6 state, "'Income' means the same as 'gross income' for federal income tax purposes" Thus, the correct manner in which to report income on the Form 6 is the same way it is reported it to the IRS, i.e., the gross income actually received, rather than the position's annual salary.

Having said this, we note that financial disclosure is required of public officials and employees because it enables the public to evaluate potential conflicts of interest, deters corruption, and increases public confidence in government. The mechanism by which that goal is achieved should not be placed above the goal itself. Thus, we have found that where for some reason information regarding dollar amounts is unknown or unavailable at the time disclosure is made, good faith estimates may be used. See, CEO's 78-1, 85-50. Further, where the purpose of disclosure has not been undermined, we have declined to find probable cause to believe the constitutional provision was violated, even where there were errors in the reporting of assets, liabilities, or income. See, *In re John A Crawford*, Complaint No. 95-85; *In re Julianne Holt*, Complaint No. 00-79 (consolidated with others). It is our understanding that your reporting of your full salary was made in the spirit of full disclosure inasmuch as your benefits were calculated based on that amount. Clarification could have been achieved by further explanation, however, and we have endorsed the practice of including explanatory comments when making disclosure to assure that information is complete, accurate, and not misleading. See CEO's 90-73, 82-30. To correct information, an amended form (Form 6X) should be filed.

Your question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 23, 2004 and **RENDERED** this 27th day of April, 2004.

Richard L. Spears, *Chairman*