

CEO 06-19 --October 25, 2006

CONFLICT OF INTEREST

STATE LEGISLATOR CONSULTING WITH WASTE MANAGEMENT COMPANY

To: Name withheld at person's request (Sarasota)

SUMMARY:

A prohibited conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, were a member of the Florida House of Representatives to consult with a waste management company as its Manager of Community and Municipal Relations. Following CEO 06-12, the inability to distinguish between the legislator's role as a paid consultant on behalf of the company and his duties as an elected representative for his constituents indicates a continuing or frequently recurring conflict of interest or an impediment to the full and faithful discharge of public duties.

QUESTION:

Does the Code of Ethics for Public Officers and Employees prohibit you, a State Representative, from being retained by a waste management company to serve as its manager of community and municipal relations?

Under the circumstances presented, your question is answered in the affirmative.

From the position description you provided and through communications with our staff, we are advised that a waste management company has offered to hire you as a part-time consultant to serve as its Manager of Municipal and Community Relations. In this position, you would handle public relations for the company. The position description further indicates that you would be responsible for "establishing positive relations between the company and its various publics through creative uses of the news media, speaking engagements for company executives, and other public relations vehicles." Other essential duties and responsibilities listed on the position description include:

- Generates opportunities to promote a positive image of the company producing a climate in which the company can operate most effectively.
- Establishes strong positive relationships with the news media, consumer groups, community organizations, and others who are in a position to impact the company's public image. Uses relationships to suggest stories, provide quotes from company authorities and obtain interviews.

- Researches and reads extensively in order to learn corporate and divisional objectives, understands key industry issues, and spot industry related news stories that provide opportunities to advance the interests of the company.
- Responds to press inquiries by either selecting the appropriate company authority and briefing them on issues and suggesting answers, or responding as company spokesman.
- Evaluates social and political issues and determines the appropriate extent of the company's involvement. On major issues, develops a strong, consistent platform which provides media coverage, direct contact with producers and exposure to elected officials.
- Writes public statements issued by executives including speeches, testimony, articles, and press releases. Researches issues, gathers material from company experts, and presents in an interesting fashion so that audiences can understand and the press will want to quote.
- Reviews and selects public speaking opportunities for executives. Prepares executives by briefing on issues and meeting specifications, composing biographies of VIP's, anticipating questions and answers, and rehearsing the delivery. For critical, televised events, may consult with media expert.
- Determines target markets, writes press releases and communications, and develops a plan of action outlining creative means of generating publicity.
- Writes material for corporate communications which increases the visibility of senior executives within the company and explains corporate objectives and industry issues to employees.
- Manages the community relations program which provides favorable publicity.
- Hires and directs the work of a public relations company or freelance staff for large, critical projects as needed.

You estimate that these responsibilities would engage you for about one half-day per week, enabling you to continue your primary, long-time employment as an insurance agent. You further advise that your duties for the company would focus geographically on southwest Florida, an area that includes a portion of your legislative District. You ask if this consulting work would create a prohibited conflict of interest.

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

CONFLICTING EMPLOYMENT OR
CONTRACTUAL RELATIONSHIP.--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 is an officer or employee . . .; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties, or that would impede the full and faithful discharge of his public duties.

...

The first part of Section 112.313(7) prohibits a public officer from having a contractual relationship with any business entity regulated by or doing business with his agency. Although the Legislature conceivably will enact laws which impact the solid waste industry, including this company's interests, we have previously opined that the passage of legislation is not the type of regulation prohibited by Section 112.313(7)(a) due to the express language of Section 112.313(7)(a)2, Florida Statutes, which provides:

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.

Accordingly, the first part of the statute is inapplicable to your situation.

The second part of Section 112.313(7)(a) prohibits a public officer from having any contractual relationship which would create a continuing or frequently recurring conflict between his private interests and the performance of his public duties, or that would impede the full and faithful discharge of his public duties. This provision 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 interests to determine whether the two are compatible, separate and distinct, or whether they coincide to create a situation which "tempts dishonor." Zerweck v. Commission on Ethics, 409 So.2d 57 (Fla. 4th DCA 1982). Section 112.313(7)(a)(2) does not apply to supercede conflicts arising under the second part of Section 112.313(7)(a). See CEO 06-12 and CEO 03-3.

In CEO 06-12, we concluded that the president of the Florida Association of Realtors would violate this part of the statute if she were elected to the Legislature and continued to serve as the Association's president, because of the intersection between the two roles and because it would be impossible to draw a line distinguishing when she was acting as "State Representative" and when she was acting "as president of the FAR" [Florida Association of Realtors]. Similarly, here, there would be no way to distinguish between when you are wearing your "legislator" hat and when you are wearing your

"waste management company" hat when you undertake the activities listed in the position description. Moreover, the local governments you would interact with on behalf of the company could feel unduly pressured to yield to your influence so that they do not alienate you when they approach you with their local issues of legislative concern, and the voters who elected you would be confused about whether you were advocating for an issue because you genuinely believed it was good legislative policy, or because you were receiving compensation from a company whose interests could be impacted by the issue. For these reasons, the rationale of CEO 06-12 applies equally to your proposed consulting arrangement.

Accordingly, under the specific factual circumstances presented here, we find that a prohibited conflict of interest would exist if you were to perform consulting work for a waste management company as its Manager of Community and Municipal Relations concurrent with your service as a member of the Florida House of Representatives.

ORDERED by the State of Florida Commission on Ethics meeting in public session on October 20, 2006 and **RENDERED** this 25th day of October, 2006.

Norm M. Ostrau, *Chairman*