



## *Florida House of Representatives*

*Marco Rubio, Speaker*  
Office of the General Counsel

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### FORMAL OPINION 08-01

To: Representative Paige Kreegel, District 72

Prepared by: Jeremiah Hawkes, General Counsel  
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Date: February 19, 2008

Re: Conflict of Interest as a Shareholder in a Medical Company

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You inquired whether any special measures must be taken to avoid a conflict of interest between your business and your service as the State Representative for District 72. The facts of your letter indicate that you are a shareholder in a health care company that will provide packages of medical services to various organizations. The organizations will be private corporations as well as counties, cities, sheriff's departments, water districts and fire-control districts.

Based on the facts provided, there is no conflict and no special measures need to be taken.

First, Article II section 8(e), Florida Constitution, provides:

No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

Therefore, the only prohibition found in the Constitution is from representing the business in front of the Legislature or another state agency for compensation. There is no evidence of a conflict under the facts you have presented.

Second, section 112.313(7)(a), F.S., is the statutory prohibition on conflicting employment for public officers and provides:

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.

This section prohibits a contractual relationship in the following situations: (a) employment in regulated entities; (b) employment that would create a frequently recurring conflict; and (c) employment that would impede the full and faithful discharge of his or her public duties.

Local governments are a political subdivision of the state and the argument could be made that they are subject to the regulation of the Legislature. However, section 112.313(7)(a)(2), F.S., contains an exemption:

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 Legislature and your regulatory authority over local governments, water districts, and fire districts is strictly through the enactment of laws. Thus, you would fall within the exemption of section 112.313(7)(a)(2), F.S., and a conflict would not be present.

A conflict would not exist due to the exemption of section 112.313(7)(a)(2), F.S.; therefore, the second clause of section 112.313(7) requires no analysis.

The third clause of section 112.313(7), F.S., prohibits employment that would impede the full and faithful discharge of your public duties. There is no evidence that your role as shareholder would impede your duties as a member of the Florida House of Representatives.

Therefore, there is no evidence that section 112.313(7), F.S., would create a conflict.

Section 112.313(9)(a)(3), F.S., mirrors the Constitutional language that prohibits members from representing others before state agencies while in office.

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.

However, our prior opinions have held that local governments and water districts do not fall within the definition of state agency for the purpose of that section of statute, see House Opinion 97-05. Consequently, the prohibition in section 112.313(9)(a)(3), F.S., would not apply to your situation.

Finally, House Rule 15.4 deals with conflicting employment and provides:

A member shall:

- (a) Scrupulously comply with the requirements of all laws related to the ethics of public officers.
- (b) Not allow personal employment to impair the member's independence of judgment in the exercise of official duties.
- (c) Not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the member or any other person when such activity is in substantial conflict with the duties of a member of the House.

The first requirement of Rule 15.4 is satisfied as explained in the above paragraphs. There is no indication that you would not be able to fulfill the second requirement. Moreover, there is no evidence that your duties as shareholder would be in conflict with your duties as a House member.

Florida has citizen legislators and the laws and House rules should not be construed to limit the employment of a legislator when there is no indication that the legislator's independence or judgment would be impaired. Therefore, in analyzing your situation, there does not appear to be a conflict of interest.

JMH/JA/ch

cc: Office of the Speaker  
Rules & Calendar Council  
Committee on Ethics & Elections  
Commission on Ethics  
Jay Vail, Senate Counsel  
Office of the Clerk  
Majority Office  
Minority Office