

# Public Officer Conflicts of Interest

---

KYLE J. BENDA

ASSISTANT COUNTY ATTORNEY

# Voting Requirements

---

- Section 286.012, Florida Statutes

- **A member** of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted **may not abstain from voting** in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, **unless, with respect to any such member, there is, or appears to be, a possible conflict of interest . . .**
- If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

# Voting Requirements (cont.)

---

- Section 286.012 lists the following possible conflicts of interests:
  - Section 112.311 – the legislative intent section, which outlines the basic principals regarding conflicts of interest
  - Section 112.326 – provides that local governments can enact more stringent standards
  - Section 112.313 – the actual standards of conduct for public officers and employees
  - Section 112.3143 – voting conflicts of interest
- Conflicts of interest relating to doing business with one's agency or having a conflicting contractual or employment relationship can be waived upon full disclosure to the governing body and two-thirds vote of that body

# Potential Conflict of Interest

---

- Section 112.313, Florida Statutes
  - Standards of Conduct for Public Officers
    - Solicitation of Acceptance of Gifts
    - Doing Business with One's Agency
    - Unauthorized Compensation
    - Misuse of Public Position
    - Conflicting Employment or Contractual Relationship
    - Disclosure or Use of Certain Information

# Waiver of Conflicts of Interest

---

- A conflict of interest created before an advisory board for (1) doing business with one's agency or (2) having a conflicting contractual or employment relationship can be waived upon full disclosure to the governing body and two-thirds vote of that body
- It is not a conflict of interest for doing business with one's agency or having a conflicting contractual or employment relationship IF:
  - Government business is transacted on a rotation system with all suppliers within the city or county
  - Government business is awarded under a system of sealed, competitive bidding and
    - The public official or official's spouse/child has in no way participated in the determination or attempted to use the official's influence to persuade the government to enter into such contract and the official filed a statement with the Florida Commission on Ethics before the bid is made
  - The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier
  - It is an emergency purchase made in order to protect the health, safety, or welfare of the citizens

# Waiver of Conflict of Interest (cont.)

---

- It is not a conflict of interest for doing business with one's agency or having a conflicting contractual or employment relationship IF:
  - The business entity is the only source of supply within the city or county and there is full disclosure to the governing body before the purchase
  - The total amount of transactions in the aggregate for the year does not exceed \$500.00
  - The fact that a public officer is a shareholder of a bank does not bar the bank from qualifying as a depository of funds coming under the jurisdiction of the board
  - Certain transactions for research at state universities are exempted
  - A public officer can purchase goods in a private capacity from an entity doing business with the public officer's board (or subject to regulation by the board or governmental agency) so long as the public officer pays a price similar to other members of the public

# Solicitation or Acceptance of Gifts

---

- Section 112.313(2)

- **No public officer**, employee of an agency, local government attorney, or candidate for nomination or election **shall solicit or accept anything of value to the recipient**, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

# Doing Business With One's Agency

---

- Section 112.313(3), Florida Statutes

- **No employee** of an agency acting in his or her official capacity as a purchasing agent, **or public officer** acting in his or her official capacity, **shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency** from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest.



# Unauthorized Compensation

---

- Section 112.313(4), Florida Statutes
  - **No public officer**, employee of an agency, or local government attorney or his or her spouse or minor child **shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action** in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

# Misuse of Public Position

---

- Section 112.313(6)
  - **No public officer**, employee of an agency, or local government attorney **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 or her official duties, **to secure a special privilege, benefit, or exemption for himself, herself, or others.**

# Conflicting Employment or Contractual Relationship

---

- Section 112.313(7), Florida Statutes
  - **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.**

# Disclosure or Use of Certain Information

---

- Section 112.313(8), Florida Statutes
  - **A current or former public officer**, employee of an agency, or local government attorney **may not 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.**

# Voting Conflicts

---

- Section 112.3143, Florida Statutes – Voting Conflicts
  - Broader scope than conflicts of interest in 112.313
- Includes special private gain or loss to relatives, any principal by whom the officer is retained, the parent organization or subsidiary of a corporate principal by which the officer is retained, or any business associate of the public officer
- “Relative” means “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law”
- Principal by whom retained means an individual or entity who pays something of value to another and permitted or directed that person to act on behalf of the entity

# Voting Conflicts

---

- **A public officer may not vote on any matter which the officer knows would inure to his or her special private gain or loss**
  - Or that would inure to a principal by whom the officer is retained
  - Or that would inure to a relative or business associate of the public officer
- Must be disclosed by memorandum before the public meeting
- If unknown prior to the meeting, then must be disclosed at the meeting and its minutes and then a memorandum must be filed within 15 days of the meeting

# Voting Conflicts (cont.)

---

- 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**.
- **“Special private gain or loss”** means 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:
  - The size of the class affected by the vote.
  - The nature of the interests involved.
  - The degree to which the interests of all members of the class are affected by the vote.
  - 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.

# Questions?

---