

# Basic Principles of Florida Ethics Law



Ethics Training  
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**OUR NAME IS EASY TO REMEMBER. OUR WORK IS HARD TO  
FORGET.**

[www.bmolaw.com](http://www.bmolaw.com)

# Very Important Notice, Again

Your city attorney should be the first person that you direct questions to about your participation in any activity about which you need information. Others, whether peers, friends, or attorneys, are not bound to defend or represent you in any legal matters.

In addition, the Florida League of Cities offers a free legal consultation service to any attorney who represents a municipality or elected official through the attorney. Municipal attorneys may call the league office at 850-222-9684.

# Basic Principles of Florida Ethics Law

- What is ethics law?
- What is Florida Ethics Law?
- What is this course? [exs. 1 & 2]

# Basic Principles of Florida Ethics Law

## Sources of the Law – [the Florida Constitution](#)

**A public office is a public trust.** The people shall have the right to secure and sustain that trust against abuse. To assure this right:

- (a) 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.
- (b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.
- (c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.
- (d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.
- (e) 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.
- (f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.
- (g) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.
- (h) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.
- (i) Schedule—On the effective date of this amendment and until changed by law:

**A public office is a public trust.**

# Basic Principles of Florida Ethics Law

## Sources of the Law – [the Florida Statutes](#)

Chapter 112, Part III, Florida Statutes (Legislative Intent)

“It is essential to the proper conduct and operation of government that **public officials** be **independent** and **impartial** and that **public office not be used for private gain** other than the remuneration provided by law. The public interest, therefore, requires that the **law protect against any conflict of interest** and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.”

# Basic Principles of Florida Ethics Law

## Sources of the Law – [the Florida Statutes](#)

Chapter 112, Part III, Florida Statutes (Legislative Intent)

“It is declared to be the **policy of the state** that **public officers and employees**, state and **local**, are agents of the people and hold their positions **for the benefit of the public**.

...promoting the **public interest** and maintaining the **respect of the people** in their government must be of **foremost concern**.”

# Basic Principles of Florida Ethics Law

People governed by the Florida Ethics Law

- “Public Officer” – defined to include persons elected or appointed to hold office in any agency, including any persons serving on an advisory body.



# Basic Principles of Florida Ethics Law

## Other Applicable Laws

- Florida Common Law
- Chapter 838, Fla. Stat. - Bribery: Misuse of Public Office
- Section 839.26, Fla. Stat. - Misuse of Confidential Information
- Honest Services Fraud 18 U.S.C. § 1346 [ex. 3]
- Local laws or ethics codes

# Basic Principles of Florida Ethics Law

## The Commission on Ethics

### *Nine Non Partisan Members\**

Governor 5

Senate President 2

Speaker of the House 2

*\*2 year terms/may be reappointed once, no more than 5  
from same political party*

# Basic Principles of Florida Ethics Law

## The Commission on Ethics

- *Duties*

- ☐ Advisory opinions
- ☐ Investigate complaints
- ☐ Recommend penalties
- ☐ Administer **automatic fines** for public officers and employees who fail to timely file required annual financial disclosure

# Basic Principles of Florida Ethics Law

## The Rules

- Solicitation or acceptance of gifts
- Unauthorized compensation
- Misuse of public position
- Disclosure or use of certain information
- Solicitation of Acceptance of Honoraria
- Doing business with one's agency
- Employees holding office
- Conflicting employment or contractual relationship
- Employees holding Office
- Dual public employment
- Restriction on employment of relatives
- Lobbying restrictions
- Voting conflicts
- Financial Disclosures

# Basic Principles of Florida Ethics Law

## Prohibited Actions or Conduct

(2) SOLICITATION OR ACCEPTANCE OF GIFTS.--**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**.

# Basic Principles of Florida Ethics Law

## Prohibited Actions or Conduct

(b) “Gift” **does not include**: [ex. 4]

1. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee’s employment, business, or service as an officer or director of a corporation or organization.
2. Except as provided in s. 112.31485, contributions or expenditures reported pursuant to chapter 106, contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party or affiliated party committee.
3. An honorarium or an expense related to an honorarium event paid to a person or the person’s spouse.
4. An award, plaque, certificate, or similar personalized item given in recognition of the donee’s public, civic, charitable, or professional service.
5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.
6. The use of a public facility or public property, made available by a governmental agency, for a public purpose.
7. Transportation provided to a public officer or employee by an agency in relation to officially approved governmental business.
8. Gifts provided directly or indirectly by a state, regional, or national organization which promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization or officials or staff of a governmental agency that is a member of that organization.

# Basic Principles of Florida Ethics Law

## Prohibited Actions or Conduct

(4) UNAUTHORIZED COMPENSATION.--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**.

# Basic Principles of Florida Ethics Law

## Exceptions

So, you can receive a gift... In any amount...one million dollars?

**Yes**, if: it doesn't influence you

And: it is reported if over \$100

**Exception: Cannot accept a gift from a:**

1.) political committee

2.) a vendor (see: chapter 112.3148, Fla. Stat.)

**Legal gifts**  
www.bmolaw.com



# Basic Principles of Florida Ethics Law

## Exception to the exceptions

Except for lobbyists

- Natural person
- For compensation in last 12 months
- Seeks to influence you

**includes principal of a lobbyist**

- No solicitation of lobbyist
- Maximum \$100
- Reported if over \$25
- May solicit for governmental entity or charity

Legal gifts  
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# Basic Principles of Florida Ethics Law

## Exceptions

### Cure for improper gift

Pay for gift within 90 days of acceptance

Valuation standards – § 112.3148(7), Fla. Stat.

# Basic Principles of Florida Ethics Law

## Prohibited Actions or Conduct

(6) MISUSE OF PUBLIC POSITION.--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. This section shall not be construed to conflict with s. 104.31.

[ex. 5, 6]

# Basic Principles of Florida Ethics Law

## Example: The Fire Chief

of property

### LOCAL NEWS

\* TIMES ■ WEDNESDAY, APRIL 24, 2002 **3B**

## Fire chief apologizes for van, vacation missteps

City will track van to document

KARP

Fire rescue Chief Pete Botto said Tuesday for his part and for his apparent mismanagement his hours while on jai alai in Orlando.

But to God I'm sorry and Botto said in an interview with the *Times*. "I'll make sure I see a second time. I'm not." Botto, his boss and Dick Greco, his boss and "chewed my butt" for his actions, which included taking a group of firefighters in a fire rescue van numerous times to Orlando to play jai alai.

"He said some things aren't exactly too bright," Botto recalled. The mayor said Tuesday he would not request a formal inquiry into Botto's transgressions.

Greco suspended Botto for a week last month after Botto admitted he had taken the van to Tennessee on a family vacation. The *Times* reported Tuesday that Botto never put in for those vacation hours, taking regular pay instead, a situation the mayor said he knew about and had addressed privately as part of the suspension.

Botto's work records show that his unused vacation and sick time entitle him to cash out for a lump sum of more than \$92,000, which he is eligible to receive when he retires next year. Botto, 56, is paid \$119,000 a year.

City employees, unlike those who work for the county, the School Board and Hillsborough Community College, are able to accumulate vacation time, which they can roll over into unlimited sick hours. They can cash out half of their sick hours when they retire.

There is no cap on the number of sick hours they can accrue.

Botto stopped short of admitting he had taken several days' vacation and not put in for that time, though he could not say why days off marked on his personal calendar were not documented as such with the payroll department.

"Truthfully, I don't remember those days," he said. Botto swore he would institute a new system of accountability.

"To me, it's a learning experience," said Botto, a 34-year veteran of the Fire Department and chief since 1995. "There's got to be better documentation than we've used in the past."

He declined to disclose the names of the other firefighters who had accompanied him to Orlando, saying they were all off duty.

As for using the van, the chief said that would be tracked with a log documenting the driver, the reason for use and the mileage.

"Me, personally, I'm not going to use it for sure," Botto said.


Reaction from city officials was cautious.

City Council member and mayoral candidate Bob Buckhorn said he would withhold judgment on whether Botto did anything wrong.

"There are always two sides to these things," Buckhorn said. He praised Botto as a well-liked fire chief who had boosted morale and improved the department.

City Council Chairman Charlie Miranda, who also is running for mayor, said he would look into the allegations.

"I will make comments once I know the whole story," he said.



Pete Botto said Tampa Mayor Dick Greco "chewed my butt."



# Basic Principles of Florida Ethics Law

## Example: The County Commissioner

### CLEARWATER TIMES

AN EDITION OF THE  
St. Petersburg Times

FRIDAY ■ MAY 31, 2002

## County's phone use prompts concern

From February to April 2001, county employees made more than 10,000 calls using some type of operator assistance, at a cost of more than \$7,000.

Although Todd was not named in the audit, Spratt said she was the commissioner cited in the audit for running up "significant personal usage of the county's calling card without routine reimbursement."

Todd said most of the calls identified as personal — which the audit said were to her home or to a relative — were made to check on her constituents, a task that she considered official business.

"The vast majority of calls I make when I'm on the road were to retrieve my messages," she said. "It is my intention to return calls when I get them."

The internal audit says that during twelve months ending April 2001, the commissioner spent \$2,735 in calling card charges, of which \$896 worth were identified as personal.

The audit said Todd "was apparently unaware that



County Commission chairwoman Barbara Sheen Todd said that most of the \$896 worth of calls that the county considered personal were made to constituents, which she considered official business.

calls home were not allowable when away on county business."

Bob Melton, chief deputy director of the internal audit division, said, "Generally, calls home to relatives would be considered personal. If there are exceptions, each exception should be fully documented as to the nature of the county business to be performed."

After Todd was informed of the situation, she reimbursed the district \$1,125.54, a figure that included personal calls made through November 2001,

Melton said.

"All of the employees should be aware that personal-related calls should be reimbursed," said Spratt, who took over as county administrator in December 2001.

Spratt said he remembered seeing an October 2001 memo from the previous administrator reminding employees of this policy. He said his office was drafting comprehensive policies for all communication equipment issued by the county.

But that handles only county employees. Spratt said county commissioners did not fall under employee policy.

Spratt said he learned of the audit's initial findings in January and began to take corrective measures. The audit also says Todd, at the same time, sent a memo asking all commissioners to adhere to procedures issued by the county administration.

"My responsibility as a commissioner is to make

Please see **PHONE** Page 2

# Basic Principles of Florida Ethics Law

## Prohibited Actions or Conduct

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.--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**.

# Basic Principles of Florida Ethics Law

## Prohibited Actions or Conduct - Honoraria

- (2) A reporting individual or procurement employee is prohibited from soliciting an **honorarium** which is related to the reporting individual's or procurement employee's public office or duties.
- (3) A reporting individual or procurement employee is prohibited from knowingly accepting an honorarium from a political committee, as defined in s. [106.011](#), from a vendor doing business with the reporting individual's or procurement employee's agency, from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or from the employer, principal, partner, or firm of such a lobbyist.

[ex. 7]







# Basic Principles of Florida Ethics Law

## Prohibited Employment and Business Relationship

(3) DOING BUSINESS WITH ONE'S AGENCY.--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**.

# Basic Principles of Florida Ethics Law

## Prohibited Employment and Business Relationship

Nor shall a public **officer** or employee, acting in a **private capacity**, rent, lease, or sell any realty, goods, or services **to the officer's** or employee's own **agency**, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business or when such offices are on property wholly or partially owned by the legislator.

-Exception for contracts entered into prior to office – but not changes to such contracts

# Basic Principles of Florida Ethics Law

## Prohibited Employment and Business 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;

# Basic Principles of Florida Ethics Law

## Prohibited Employment and Business Relationship

...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**.

### TESTS:

- a. Frequently recurring conflict
- b. Impede full and faithful discharge of public duties

**May yield harsh result...choice between public office and private employment.**

# Basic Principles of Florida Ethics Law

## Exceptions

- Advisory board members after full disclosure conflict may be waived by 2/3 vote of appointing body

- **General Exemptions**

- Rotation system
- Competitive bidding (must meet certain criteria and filings)
- Legal advertising, utilities service, passage on a common carrier
- Emergency purchase or contract,
- Sole source within city after disclosure
- Not exceed \$500 per calendar year
- Banks...without favor
- Private purchase at terms available to public
- Blind trusts
- 501(c)3 exemption (doing business only) [exs. 8, 9, 10, 11]

# Basic Principles of Florida Ethics Law

## Prohibited Employment and Business Relationship

- (10) EMPLOYEES HOLDING OFFICE.—(a) No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council, commission, or authority, by whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer.
- (b) The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office. [ex. 12]

# Basic Principles of Florida Ethics Law

## Prohibited Employment and Business Relationship

### Contractual Services: Prohibited Employment

- (2) An agency employee who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services may not become or be, while an agency employee, the employee of a person contracting with the agency by whom the employee is employed.

# Basic Principles of Florida Ethics Law

## Prohibited Employment and Business Relationship

### Dual Public Employment

- 2) A public officer may not accept public employment with the state or any of its political subdivisions if the public officer knows, or with the exercise of reasonable care should know, that the position is being offered by the employer for the purpose of gaining influence or other advantage based on the public officer's office or candidacy.



# Basic Principles of Florida Ethics Law

## Prohibited Employment and Business Relationship

- Exceptions:
- (a) The position was already in existence or was created by the employer without the knowledge or anticipation of the public officer's interest in such position;
- (b) The position was publicly advertised;
- (c) The public officer was subject to the same application and hiring process as other candidates for the position; and
- (d) The public officer meets or exceeds the required qualifications for the position.



# Basic Principles of Florida Ethics Law

## Restriction on Employment of Relatives

112.3135- A **public official** may **not appoint, employ, promote, or advance, or advocate** for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a **relative of the public official. An individual may not be appointed, employed, promoted, or advanced** in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a **collegial body** of which a relative of the individual is a member.

# Basic Principles of Florida Ethics Law

## Restriction on Employment of Relatives

However, this subsection **shall not apply to appointments to boards other than those with land-planning or zoning responsibilities** in those municipalities with **less than 35,000** population.

(a) POPULATION UNDER 35,000

(b) NO LAND PLANNING FUNCTION

Note that limitation is on both the public official and the employee – applies to paid and unpaid positions

Does not prohibit two relatives from being employed within the same agency, or independent contractors

# Basic Principles of Florida Ethics Law

## Restriction on Employment of Relatives

### Who is a “relative”

- Broader than voting conflicts, but narrower than gift laws

### Other Employment Restrictions (Dual Public Employment)

- Cannot be both employee and commissioner of same entity

[exs. 13, 14]



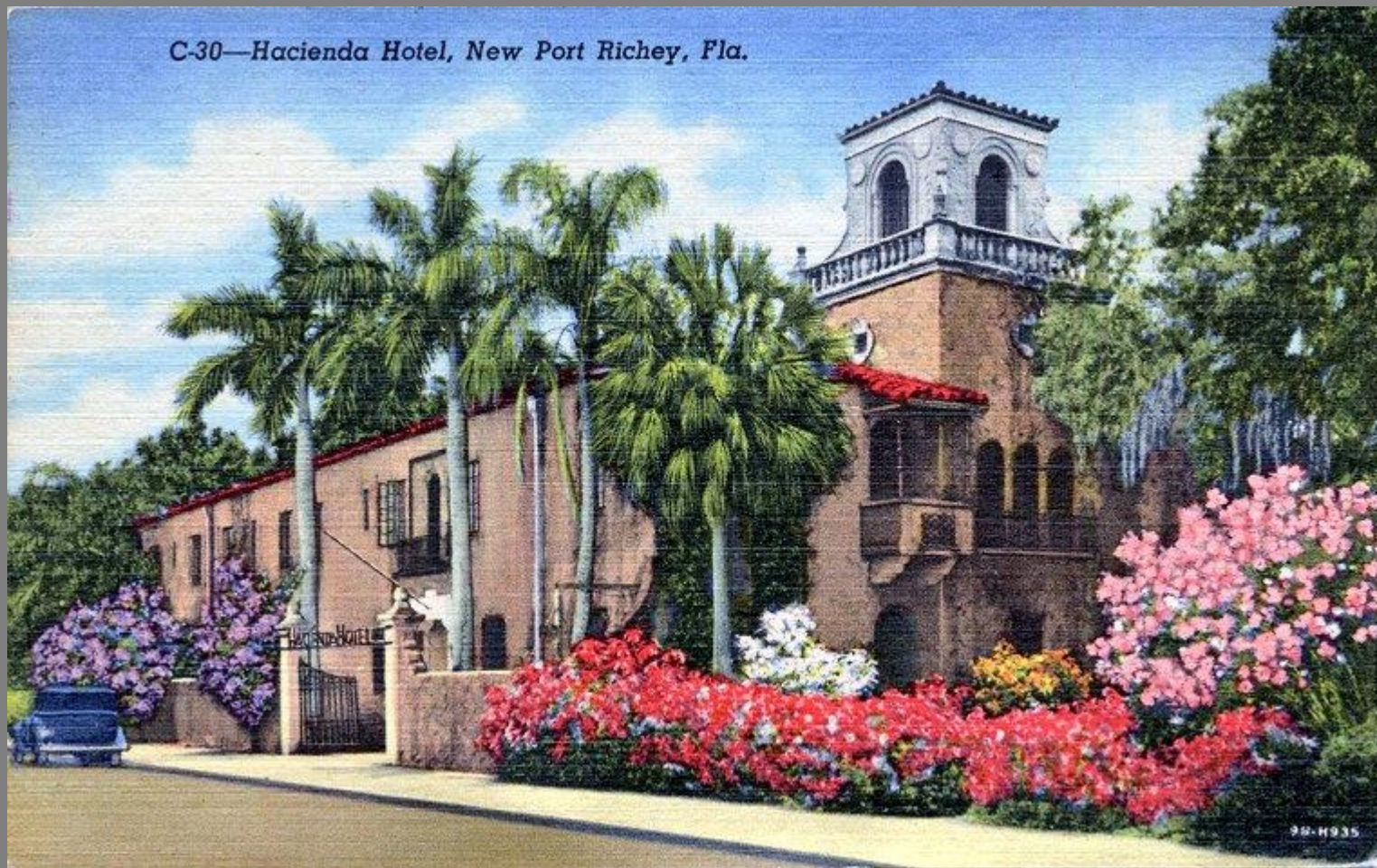


# Basic Principles of Florida Ethics Law

## Post-employment Restrictions

- 14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.— A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. [ex. 15]

C-30—Hacienda Hotel, New Port Richey, Fla.





# Basic Principles of Florida Ethics Law

## Voting Conflicts

(3)(a) No county, **municipal**, or other local public officer shall **vote** in an official capacity upon any measure which would **inure to his or her special private gain or loss**; which he or she knows would inure to the special private gain or loss of any **principal** by whom he or she is retained or to the parent organization or subsidiary of a **corporate principal** by which he or she is retained, other than an agency as defined in s. [112.312](#)(2); or which he or she knows would inure to the **special private gain or loss of a relative or business associate** of the public officer.

**TEST: SPECIAL GAIN OR LOSS**

**Announce...abstain....disclose....file... (Exception for CRA)**

**ADVICE: GET OFF DIAS – DON'T PARTICIPATE**

# Basic Principles of Florida Ethics Law

## Voting Conflicts

### Voting conflict tests

#### Standard:

- special private gain or loss (must be special and private)
- size of the class test...1%
- remote and speculative test

# Basic Principles of Florida Ethics Law

## Voting Conflicts – 2013 Statutory Changes

- Change to “special private gain or loss” if applied to a class
- If measures affect a “class” that includes the officer, relatives, business associates or principals then the following factors must be considered:

**Size of the class test**

**Nature of Interests**

**Degree to which interests affected**

**Greater when compared to members of class**

# Basic Principles of Florida Ethics Law

## Voting Conflicts – 2013 Statutory Changes

- **Applies “de minimis” standards to required filings.**  
Immaterial, inconsequential, and de minimis errors are forgiven
- **20 year statute of limitations on collection of fines**  
Collections can be through salary deduction
- **Commission may dismiss referral or complaint that it deems to be unintentional or de minimis**
- **Commission may investigate a referral from:**  
The Governor, FDLE, State Attny., US Attny., local ethics board

[exs. 16, 17, 18, 19]

# Basic Principles of Florida Ethics Law

YOU MUST VOTE UNLESS YOU HAVE A  
CONFLICT

286.012 Voting requirement at meetings of governmental bodies.--**No member** of any state, county, or **municipal governmental board**, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted **may 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, **except** when, with respect to any such member, there **is, or appears to be, a possible conflict** of interest under the provisions of s. [112.311](#), s. [112.313](#), or s. [112.3143](#). In such cases, said member shall comply with the disclosure requirements of s. [112.3143](#).





*Fun times at the Aquatic & Recreation Center*

# Basic Principles of Florida Ethics Law

## Financial Disclosure

- Full Disclosure
    - Due July 1
    - Each asset/liability worth more than \$1,000
    - Net worth
  - Limited Disclosure
    - No disclosure of dollar amounts – sources
    - Real property does not include residence/vacation homes
    - Intangible property over 10%
    - Liabilities over net worth, with exceptions
- [ex. 20]

# Basic Principles of Florida Ethics Law

## Financial Disclosure

- Forms:
  - <http://www.ethics.state.fl.us/FinancialDisclosure/DownloadAForm.aspx>



# Basic Principles of Florida Ethics Law

## Further Resources

Here are some sources for general information, events, and courses:

- Florida League of Cities [www.floridaleagueofcities.com](http://www.floridaleagueofcities.com)
- Florida Commission on Ethics <http://www.ethics.state.fl.us/>
  - Advisory opinions  
<http://www.ethics.state.fl.us/Research/Opinions.aspx>
- Florida Institute of Government and Affiliates  
<http://iog.fsu.edu/>
- Florida Statutes <http://www.leg.state.fl.us>
- Florida Attorney General <http://myfloridalegal.com/>

# Basic Principles of Florida Ethics Law

## Q&A

