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"A Public Office is a Public Trust"

April 4, 2018

Mr. Mitchell O. Palmer
Manatee County Attorney
Via Email

Re: Your letter of inquiry dated March 28, 2018 (received April 2, 2018)

Dear Mr. Palmer:

This letter is the response to your above-referenced inquiry. In your letter dated March 28, 2018, you write that you are requesting an analysis on behalf of Stephen Jonsson, a Manatee County Commissioner (the "Commissioner"), as to whether a voting conflict under the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes, ("Code of Ethics") would be created as to votes (measures) pertaining to a developer who employs the Commissioner's son as in-house counsel. In your letter, you write that the developer routinely appears before the Board of County Commissioners advocating for land use approvals for residential developments and for zoning changes. You advise that the Commissioner's son has been employed by the developer since March 1, 2018, as a salaried employee. You state that the son's compensation is not dependent on approval or disapproval by the Board of County Commissioners of specific development projects. You further state that, while he anticipates receiving occasional bonuses, the bonuses will be tied to general corporate performance and will not be tied to specific development projects. You also state that the Commissioner's son is not an officer of the developer's corporation, is not on the corporation's board of directors, and has no equity interest in the corporation. He also has no voting authority in corporate affairs. You relate that the son will not make any appearances before the Board of County Commissioners. Instead, you state that his duties include providing legal counsel to senior executives in the developer's corporation on various legal matters related to residential land development, and drafting and reviewing various types of commercial contracts, assignments, easements, and purchase and sale agreements. You also state that he has additional duties involving assisting other departments within the corporation on legal issues, such as human resources, sales/marketing, and tax matters.

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The provision of the Code of Ethics implicated by your question is Section 112.3143(3)(a), Florida Statutes, which provides:

VOTING CONFLICTS.—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. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

This statute prohibits a local public officer (e.g., a county commissioner) from voting, and imposes other requirements, whenever the measure under consideration would inure to his own special gain or loss or to that of any principal (e.g., employer, client of his firm) by whom he is retained. It also applies whenever the measure would inure to the special private gain or loss of a relative, or to that of any other person or entity listed in the statute.¹ As to such measures, the law requires a declaration of interest, abstention from voting, and the filing of a memorandum (CE Form 8B). There is no suggestion in your letter that voting on measures pertaining to the developer would inure to the Commissioner's special private gain or loss. The concern you present is whether the Commissioner will be presented with a voting conflict as to Board of County Commissioners' measures seeking approval of various land use applications.

The scenario presented here is analogous to the situation presented in CEO 11-04. CEO 11-04 concluded that a voting conflict would not be created for a county commissioner when a law firm, of which the county commissioner's son-in-law was a non-equity shareholder, represented a property owner before the county commission in land use matters, stating:

However, because [Section 112.3143(3)(a)] does not speak directly in terms of gain or loss to a client or employer of the official's relative, in order to determine whether it applies to a situation where the measure would impact a relative's client or employer, we are required to evaluate—not whether the measure impacts the relative's client or employer—but whether the measure would inure to the special private gain or loss of the relative.

There, the commissioner's son-in-law was a non-equity shareholder in the law firm, had no ownership interest in the firm, was not an officer or director of the firm, would not receive any direct bonus or compensation related to the firm's work before the county commission, and would not receive any compensation for fees received from the firm's work before the county commission. As such, the son-in-law would not derive any special private gain or loss from the

¹ "Relative" is defined by Section 112.3143(1)(c), Florida Statutes, to include one's son.

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land use measures where the firm was representing the property owner before the county commission.

Similarly, here, the Commissioner's son is a salaried employee of the developer. He is not an officer or director of the developer's corporation, nor does he have any equity interest in the corporation. While he anticipates receiving bonuses, the bonuses are tied to the corporation's corporate performance and not to any specific development project. As such, under the circumstances presented here, the Commissioner's son apparently will not derive any special private gain or loss from measures where the developer appears before the County Commission seeking approval of land use applications or zoning changes. Therefore, Section 112.3143(3)(a), Florida Statutes, apparently will not prohibit the Commissioner from voting on measures pertaining to the developer.

If the facts of your situation change in a material way, please contact us for further guidance. If you do so in the future, please reference this letter. Feel free to contact me if you have any questions.

Sincerely,



John M. Knight
Staff Attorney
Florida Commission on Ethics