

# Florida Ethics Law



August 17, 2017

Bryant  
Miller  
Olive

OUR NAME IS EASY TO REMEMBER. OUR WORK IS HARD TO FORGET.

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# Article II, Section 8, Florida Constitution

*“A public office is a public trust”*

- (a) Disclosure of Financial Interests
- (b) Disclosure of Campaign Finances
- (c) Liability for Breach of Public Trust for Private Gain
- (d) Felony for Breach of Public Trust = forfeiture of retirement
- (e) Allowing for restrictions against representing individuals before your governing body (Revolving Door)
- (f) Providing for independent commission to conduct investigations and make public reports (Florida Commission on Ethics)
- (g) Requiring a code of ethics for all state employees and non-judicial officers prohibiting conflict between public duty and private interests (Code of Ethics – chapter 112, part III)
- (h) No limitation on disclosures or prohibitions otherwise established by law to preserve public trust and avoid conflicts between public duties and private interests.

# Basic Principles of Ethics in Florida

## Chapter 112, Part III

“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 Ethics in Florida

## Chapter 112, Part III (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**.”

# Persons Governed By the Ethics Laws

- “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 Ethics in Florida

## Other applicable laws

- Florida Common Law
- Chapter 838-Bribery: Misuse of Public Office
- Section 839.26, Fla. Stat. - Misuse of Confidential Information
- Honest Services Fraud 18 USC sec. 1346
- Local laws or ethics codes

# Commission on Ethics

## *Nine Non Partisan Members\**

Governor 5

Senate President 2

Speaker of the House 2

*\*2 year terms/may be reappointed once*

## *Duties*

- Advisory opinions
- Investigate complaints
- Recommend penalties

# Basic Principles of Ethics in Florida

## Statutory Subjects...Chapter 112

- Solicitation or acceptance of gifts (bribes)
- Unauthorized compensation (gift for influence)
- Misuse of public position
- Disclosure or use of certain information
- Doing business with one's agency
- Conflicting employment or contractual relationship
- Voting conflicts
- Restriction on employment of relatives (nepotism)
- Financial Disclosures (Form 6)



# Basic Principles of Ethics in Florida

## Gifts

(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**.

Bribe<sup>9</sup>

# Basic Principles of Ethics in Florida

MIAMI BEACH

MARCH 29, 2017 10:20 PM

## Bribery attempts in Miami Beach drop, but they still happen, ethics survey shows



BY JOEY FLECHAS  
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Twenty-two percent of Miami Beach public employees surveyed by Miami-Dade government ethics officials say they've been offered a bribe at some point in their career — highlighting a pitfall of working in a sexy, high-rolling atmosphere where a great deal of money flows through the city.

For a city that has battled corruption within its ranks, the number marks a welcome decrease from results of the same survey taken four years ago, when Miami Beach was grappling with the aftermath of serious corruption scandals. In 2012, seven fire inspectors and code compliance officers were caught [taking bribes from an Ocean Drive nightclub](#). Later that year, a former procurement director was charged with [rigging public bids](#).

Back then, 27 percent of employees reported having been offered a bribe, and just 33 percent felt there were appropriate protections for whistleblowers.

# Basic Principles of Ethics in Florida

## Gifts

(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 Ethics in Florida

# Legal and reportable gifts

In any amount...one million dollars?

It doesn't influence you

It is reported if over \$100

Legal gifts

# Basic Principles of Ethics in Florida

## Legal and reportable gifts

- Natural person
- For compensation in last 12 months
- Seeks to influence you?
- Are they a lobbyist? **(includes principal of a lobbyist)**
- Are they a vendor?
- Maximum \$100
- Reported if over \$25
- May solicit for governmental entity or charity
- Honoraria and Honorarium

Legal gifts

## Basic Principles of Ethics in Florida

# Legal and reportable gifts

### Cure for improper gift

Pay for gift within 90 days of acceptance

Valuation standards-section 112.3148 (7) FS

Legal gifts

# Basic Principles of Ethics in Florida

## Misuse of public position

(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.

# Basic Principles of Ethics in Florida

## Ethics complaint filed in Lee Supervisor of Elections race

[BILL SMITH, BSMITH@NEWS-PRESS.COM](mailto:BSMITH@NEWS-PRESS.COM) Published 2:10 p.m. ET Nov. 4, 2016 | Updated 10:57 a.m. ET Nov. 5, 2016

*A Fort Myers lawyer has filed an ethics complaint against Lee Elections Supervisor Sharon Harrington complaining county-paid radio ads promote her campaign*



(Photo: .)

A Fort Myers man has filed an ethics complaint against Lee County Supervisor of Elections Sharon Harrington complaining that he hears too many commercials for the election supervisor's office on the radio in which Harrington's name is mentioned.

The complaint, filed by Fort Myers attorney Christopher Crowley, notes that the elections office bought more than \$200,000 in radio ads in the fiscal year that ended Sept. 30 and has spent at least \$10,908 for radio commercials between the start of the new fiscal year on Oct. 1 and Oct. 18.

Harrington is a candidate for re-election against challenger Tommy Doyle in a non-partisan contest.

Crowley was elected as Lee County's Republican State Executive Committee in the August primary.

Crowley's complaint does not claim violation of any specific provision of the state Code of Ethics for public employees and officials. It notes that there are more election-related commercials this year and that they include Harrington's name. Crowley asks the state Ethics Commission to investigate "these allegations for a potential misuse of public position."

"Every time I turn on my radio, there is another taxpayer funded advertisement from the Lee County Supervisor of Elections' (sic) office that specifically mentions Sharon Harrington's name," the complaint states. "I do have a problem with the Supervisor of Elections promoting her re-election via taxpayer funded announcements."



# Basic Principles of Ethics in Florida

## Disclosure or use of certain information

(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 Ethics in Florida

## Doing business with one's agency

(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 Ethics in Florida

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 Ethics in Florida

## Conflicting employment or contractual 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 Ethics in Florida

...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 Ethics in Florida

## 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)

# Basic Principles of Ethics in Florida

## 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

# Basic Principles of Ethics in Florida

## Voting conflict tests

### Standard:

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

**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 Ethics in Florida

## You must vote unless you have a legal 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](#).

# Basic Principles of Ethics in Florida

## 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 Ethics in Florida

## 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 Ethics in Florida

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

# Basic Principles of Ethics in Florida

## 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

# Questions?

- Remember, no one (or attorney) can authoritatively answer a question specific to your circumstances for you unless they officially represent you.
- For further information on any topic, feel free to contact the Florida League of Cities at 850-222-9684, or [www.flcities.com](http://www.flcities.com).

# 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/>
- Florida Institute of Government and Affiliates <http://iog.fsu.edu/>
- Florida Statutes <http://www.leg.state.fl.us>
- Florida Attorney General <http://myfloridalegal.com/>

*Thank you for attending the FLC Continuing Education in Ethics 2017! If you would like further information, contact Carol Westmoreland at [cwestmoreland@flcities.com](mailto:cwestmoreland@flcities.com) or 850-570-7206.*

**Florida's Public Meetings and  
Public Records Laws**



**Bryant  
Miller  
Olive**

**Presenters: Nikki Nate and Ellie Neiberger**

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

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



# Florida's Sunshine Law

## Public Meetings

### FLORIDA CONSTITUTION - Article I, section 24

#### Access to public records and meetings.

- All meetings of any collegial public body or the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature, shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

# Florida's Sunshine Law

## Public Meetings

### Section 286.011(1), Florida Statutes:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

# Florida's Sunshine Law

## Public Meetings

### Section 286.011(2), Florida Statutes

The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

# Florida's Sunshine Law

## Public Meetings

### 3 basic requirements:

- Meetings must be open to the public
- Reasonable notice of the meetings must be given
- Minutes must be taken and kept as public records

## Florida's Sunshine Law Public Meetings

**What constitutes a “meeting” for purposes of the public meeting requirements of the Sunshine Law?**

- Communications between two or more board members of the same board
- On any matter which may come before the board

# Florida's Sunshine Law

## Public Meetings

### Location of Meetings

- Within the jurisdiction
- If private property, must not discriminate on any protected classification or otherwise unreasonably restrict public access
- Suitable size
- Ability for attendees to hear discussions
- Cannot exclude members of the public or have a chilling effect on public's willingness, desire, or ability to attend

# Florida's Sunshine Law

## Public Meetings

What is reasonable notice?

- No special time or form of notice required by Sunshine Law, but other laws may have specific notice requirements (e.g., zoning ordinances).
- Whatever is reasonable under the particular circumstances.

# Florida's Sunshine Law

## Public Meetings

### Notice Guidelines:

- State date, time, place of meeting, and attach the agenda if available (if not, general description of the subject to be considered)
- Be prominently displayed in City Hall in area set aside for that purpose
- Timing:
  - Generally should be provided at least 7 days before meeting
  - Special meetings – at least 72 hours before if possible; no less than 24 hours
  - Emergency – most appropriate and effective notice under the circumstances



# Florida's Sunshine Law

## Public Meetings

### Minutes

- Written minutes of all public meetings must be taken
- Minutes must be made part of public record
- No requirement to video, audio record, or take verbatim transcript; however, if such a recording is made, it is a public record.
- Draft minutes may be circulated to individual board members for review prior to approval by the board, so long as any corrections are discussed and adopted during the public meeting when the board adopts the minutes.
- Draft minutes are public records

# Florida's Sunshine Law

## Public Meetings

### Who does the Sunshine Law apply to?

- City's governing body (City Commission/City Council)
- Any body created to advise/make recommendations to the City's governing body, even if advisory committee's recommendations are not binding
- Any two or members of City's governing body who are discussing City business
- Communications between a City commission member and a third person being used as a conduit to communicate with other commission members

# Florida's Sunshine Law

## Public Meetings

### **But Sunshine Law does not apply to:**

- Generally does not apply to staff or internal staff meetings
- Meetings between City staff or citizen and a single member of the City Commission
- Purely fact-finding committees

# Florida's Sunshine Law

## Public Meetings

### What forms of communication are subject to the Sunshine Law?

- All communications - in person, phone, letters, carrier pigeons, emails
- Includes new methods of electronic communications such as Twitter, Facebook, LinkedIn, instant messages, and text messages (including related metadata).

## Florida's Sunshine Law Public Meetings

What about the exchange of information between members of a board of governing body through a liaison?

- Prohibited in general.
- May still have one-on-one meetings with staff, as long as no one serves as a conduit between board members.

# Florida's Sunshine Law

## Public Meetings

### Exemptions – ALL STATUTORY

- Pending Litigation
- Labor negotiations-bargaining team
- Risk management committees
- Security system meeting
- Vendor negotiations

Construed strictly and narrowly in favor of openness

# Florida's Sunshine Law

## Public Meetings

What can happen if the law is violated?

- **Criminal penalties**
- **Removal from office**
- **Non-criminal penalties and fines**
- **Attorneys' fees**
- **Injunctive and declaratory relief**
- **Action taken may be void *ab initio* (legally nullified)**

## Florida's Sunshine Law Public Meetings

**Does the Sunshine Law prohibit me from attending a social function with colleagues on a public board?**

**Answer: No, as long as no discussion occurs on matters which may come before your board.**



## Florida's Sunshine Law Public Meetings

**Can a violation be cured?**

**Answer:** Yes, as long as there is independent final action taken in the Sunshine, which is not merely a perfunctory ratification of secret meetings.

BUT, the “cure” only prevents the action taken from being null and void.

# Florida's Sunshine Law Public Meetings Q&A



# Florida's Public Records Law



# Florida's Public Records Law

## Section 119.01, Florida Statutes

### General state policy on public records:

- It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.

## Florida's Public Records Law

### What is a “public record”?

- **All records and documents made or received in connection with the official business of a governmental entity is subject to public inspection and copying.**
- **This includes records created by staff, commissioners/council members, committees, and advisory boards.**

# Florida's Public Records Law

## Created to

- **Communicate**
- **Formalize**
- **Perpetuate**

## Florida's Public Records Law

### Are my notes a public records?

- Notes and non-final drafts that formalize knowledge or communicate official business are public records
- Personal notes to help jog a memory are not public records
- Personal notes intended to communicate, perpetuate or formalize knowledge are public records

## Florida's Public Records Law

What about all of the work I do on my computer? Is that public too?

- Purely personal e-mails are not public records, but be warned there is no “expectation of privacy” for the communications you make on a government-owned computer
- City related e-mails, Facebook entries, Tweets and Instant Messages are public records
- Includes metadata



# Florida's Public Records Law

## Florida Constitution, Declaration of Rights

### Article I, Section 24

**Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.**

## Florida's Public Records Law

- **Section 119.07(1)(a)**

**Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.**

## Florida's Public Records Law

- **Duty to promptly acknowledge and respond in good faith**

### **Section 119.07(c)**

**A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.**

## Florida's Public Records Law

**What about exemptions?? Surely the Legislature didn't mean ALL records?**

**Exemptions must be**

- **Statutory**
- **Narrowly applied**
- **Provided in writing to requestor**
  
- **Exempt v. confidential**

## Florida's Public Records Law

**What about the costs of responding to requests?**

- **Fee for duplication authorized by statute**
- **Extensive use of IT resources, staff, or supervisory, may require a “special service charge”**
- **Special service charge must be reasonable and based on actual cost incurred**

## Florida's Public Records Law

### What can happen if the Public Records Law is violated?

- **Knowing violations can mean jail time and a fine up to \$1,000**
- **Any violation can mean fines, civil actions, attorneys' fees and court costs**
- **May be removed from office**

## Florida's Public Records Law

**What do I do if I receive a public records request?**

- **Duty to respond and include any records you have which may be responsive to the request**
- **Contact records custodian**
- **Consult entity's attorney**

# Public Records Law Q&A

