

Ethical Behavior in Office: Know the Law, Trust Your Conscience

by John Hubbard

I have been a city attorney since 1972, and I have been the Dunedin city attorney since 1974. During that time, I have had extensive experience with Florida's ethics statute and how it affects the elected officials and other employees in the cities I have represented.

It seems to be the case with many communities that there is a very limited or no discussion of the state's ethics statute initiated by those cities. Public officials who are willing to attend the Institute of Elected Municipal Officials (IEMO) programs get a two-hour training session on the statute. However, even that much time is not really sufficient to fully discuss it. When teaching the IEMO course, I attempt to briefly discuss the common law (case law), as well as state and federal statutes that deal with some of the subjects that are also found within Chapter 112, Florida Statutes.

The following article is a quick summary of many of the subjects that I cover in my IEMO presentation. I have found that IEMO students appreciate specific, real-life examples, as they are very helpful in understanding the scope of the statute. (See page 28 for information about upcoming IEMO sessions.)

Please understand that some of the comments made in these materials are somewhat "editorial" in nature since I have rather strong opinions on the importance of ethical behavior by public officials and employees.

It is appropriate to give credit to Phil Claypool, director of the Florida Commission on Ethics, since he was

nice enough to review these materials. Any misstatements or typographical errors are mine, not his.

A Brief Overview of the Ethics Law (Chapter 112, Part III, Florida Statutes)

The ethics law in the State of Florida is based primarily on three principles:

1. "A public office is a public trust."
2. A situation that "tempts to dishonor."
3. No man can serve two masters.

The first statement is from Article II, Section 8 of the Florida Constitution. The second statement is from Florida case law and opinions of the state Commission on Ethics. The third statement is from the Bible and Florida case law.

The application of these three concepts in a situation where an elected or appointed public official is concerned about an issue of ethical behavior will generally yield an answer consistent with statutory and case law.

You Can't Always Know What to Do by Reading the Statute

The ethics law for the State of Florida is set forth in Part III of Chapter 112, Florida Statutes. You can read the statute and still be somewhat uncertain as to your ethical duties. The statute is interpreted by Commission on Ethics formal opinions, informal opinions, Florida's attorney general opinions, and case law.

It's Not Just Statutory

Long before the people of Florida put in their constitution that we would have an ethics law, certain principles of appropriate conduct for an elected official or a public employee were articulated in the common law (case law) of Florida.

In the case of *Lainhart v. Burr* in 1905, the Florida Supreme Court ruled that a county commissioner could not buy supplies for the county from himself. At least two of the underlying principles are implicated here:

1. No man can serve two masters; and
2. Don't get yourself into a situation that "tempts to dishonor."

The case is interesting because of the fact that the court ruled that this was unlawful conduct not because a wrong inevitably results, but because it may and probably will result. The court said proof that no wrong was intended or committed, or that no fraud resulted, does not make the behavior legally acceptable. In this case, the contract for the sale of goods was voided by the court.

In 1934, the Florida Supreme Court decided the case of the *City of Leesburg v. Ware*, in which the court voided a bond-purchase transaction as being against public policy because the city bond trustee was also the president of the bank from which the bonds were purchased. This was in the middle of the Great Depression, and the president of the bank sold certain bonds to the city. The bonds were of little value,

and there was certainly an apparent conflict in the duties of the president to his bank and the duties of that same person as a city bond trustee. The opinion in this case is wonderfully written and articulates the underlying principle that no man can serve two masters or be a judge in his own cause.

What is important to remember here is that the common law of Florida, as well as Chapter 112, Florida Statutes, defines appropriate conduct of elected and appointed officials in Florida and that even if a gap exists in the statutory language, the common law principles may serve to void or otherwise punish unethical conduct.

Criminal Statutes

Certain criminal statutes are also applicable to specific types of unethical conduct. Chapter 838, Florida Statutes, deals with bribery, unlawful compensation, official misconduct (for example, falsifying or concealing public records, or obstructing information about a felony), misuse of confidential information, bid tampering, and other unlawful acts by public officials. Chapter 839, Florida Statutes, addresses the misuse of confidential information, withholding official records, falsifying records and withholding records from a successor by public servants. Some of these criminal statute concepts are reflected in Chapter 112, Part III, Florida Statutes, with different standards and different penalties.

When considering the issue of ethical conduct while holding an elective or appointive office, or working as a public employee, there are at least three areas of the law that govern proper conduct:

1. The common law;
2. The criminal law; and
3. Chapter 112, Part III, Florida Statutes.

All of these are potentially applicable to a given fact situation and may provide relief against the unethical (or illegal) conduct of a public official.

Honest Services Fraud

Besides the criminal statutes quoted above, there has been a recent trend of prosecution of public officials by fed-

eral prosecutors on the basis of what is commonly referred to as “honest services fraud.”

In 1988, Congress enacted the Honest Services Fraud statute, 18 U.S.C. §1346, to provide federal prosecutors with another method of criminally prosecuting public officials who forget that public service is not undertaken to benefit themselves but to provide “honest services” to their constituents. Federal prosecutors have used this statute to react to many different types of abuse of office by elected officials. The application of the statute to public officials still generates substantial discussion in the courts, but as of the writing of this analysis, the statute has not been deemed to be unconstitutional and has been applied in many different situations.

Essentially, the case law has defined violations of honest services as follows: “When a political official uses his office for personal gain, he deprives his constituents of their right to have him perform his official duties in their best interest.” The Eleventh Circuit has opined that “public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest. If the official instead secretly makes his decision based on his own personal interest . . . the official has defrauded the public of his honest services.”

The cases fall into two broad categories: 1) bribes or kickbacks, and 2) cases involving self-dealing. The failure to disclose a conflict of interest falls within the intent of the statute. South Florida has been particularly subject to prosecution based on honest services fraud.

Some recent examples may be helpful:

1. A Palm Beach County commissioner voted on multiple bond awards to underwriting firms where her husband was employed without disclosing this information to the public;
2. That same person and her husband received gifts, such as free and discounted stays at hotels, from parties who had matters before the County Commission;

3. Another Palm Beach County commissioner voted to extend development rights that increased the value of properties in which he held a secret interest and received a share of the profits therefrom; and

4. A Palm Beach County commissioner advocated and voted for a real estate transaction that benefited his secret financial interests in the subject realty.

Cases throughout the country sometimes involve what used to be expected political behavior, but which are no longer lawful, including 1) giving out thousands of civil service jobs based on political patronage, and 2) hiring or promoting based on nepotism. Secrecy as to the relationship or act appears to be a common theme in these cases.

The Constitution and the Commission on Ethics

Article 2, Section 8 of the Florida Constitution is the basis for governmental ethics in the State of Florida. Its first sentence is: “A public office is a public trust.” The next sentence is: “The people shall have the right to secure and sustain that trust against abuse.”

As mentioned earlier, the ethics statute is found in Part III of Chapter 112, Florida Statutes. This statute is enforced by the Commission on Ethics. The commission has nine members. Five members are appointed by the governor, two members are appointed by the president of the Senate, and two members are appointed by the speaker of the House of Representatives. Appointments are bipartisan. Appointments are for two years, and members may be reappointed only one time. There can be no more than five members from any one political party.

The commission has two duties. The first is to issue legal opinions when requested by a public officer or employee. Opinions of the Commission on Ethics, unlike those of your city attorney, or even the attorney general of the State of Florida, are legally binding determinations of law subject to appeal to a District Court of Appeal. Of course, all of the pertinent facts must

be accurately provided to the Commission on Ethics for that opinion to be truly binding.

The Commission on Ethics' second duty is to investigate violations of the ethics law. The commission may not institute an investigation, and its powers begin when it receives a legally sufficient complaint, which must be submitted on the forms provided by the commission. All of these materials may be obtained online.

It has been my experience that a wide variety of people file ethics complaints. You don't have to have any special knowledge or special interest in the behavior of an elected or appointed official, or public employee, to file a complaint. Sometimes they are filed based only on newspaper reports. Unsurprisingly, the great majority of ethics complaints are filed either by citizen activists or political opponents.

The Essence of Ethics

The Florida ethics statute is not about ethics taught on an academic level, which generally discuss a body of principles of right or good conduct, or the study of the general nature of morals or moral choices. It is, rather, money-based or personal benefit-based. The statute's primary thrust is using an office or a position to obtain a benefit for yourself, a member of your family, an employer, or others. Essentially, it is about using an office or a position to benefit yourself in a manner that would not be possible without the use of that office. The ethics statute deals with conflicts between the duties and responsibilities of an office or position and the personal interests of the person holding that office. It concerns itself with situations in which a regard for a private interest tends to lead to a disregard of a public duty.

What Does the Statute Include?

The primary topics of the ethics law in Florida are:

- 1. Solicitation or Acceptance of Gifts.** This is essentially a bribe, which requires the acceptance by a public officer, spouse or minor child of anything of value that the public officer should

have known was given to him or her to influence a vote or other action. In other words, it is a quid pro quo understanding. The title makes it sound like a true gift, but it is, in fact, a bribe.

- 2. Doing Business with One's Agency.** This statute includes two different relationships. A public official cannot do business for his agency with an entity in which he or his spouse or child is an officer, partner or proprietor or in which he, his spouse or child has a material interest of 5 percent or greater. This statute also covers that same public official in his private capacity doing business with his agency.
- 3. Unauthorized Compensation.** This part of the statute provides that a public official, spouse or minor child may not accept anything of value if the official, with exercise of reasonable care, should have known that it was given to influence a vote or other action. This is not a bribe. This is not a bribe. This part of the statute helps to define a legal gift – that is, a gift that is given but does not influence the actions of the public official. There will be more about this later in the article.
- 4. Misuse of Public Position.** This part of the statute does not allow a public official to “corruptly” use his official position or any property or resource of that position to secure a special privilege or benefit for himself or for others. Keep in mind that this deals with the powers of the office as well as the resources (property) of the office. There are lots of Commission on Ethics cases on this particular part of the statute, including a circuit court clerk who prevented a person from purchasing property at a foreclosure sale in order to acquire the property for his son (misuse of office); a

county commissioner who used county equipment and personnel to repair a road on his farm (use of public property); and a county commissioner who threatened to fire a county employee if the employee's wife did not withdraw as a candidate for the school board against the county commissioner's friend (misuse of office). There are also several cases or situations involving attempts to avoid a traffic ticket (misuse of office).

- 5. Conflicting Employment or Contractual Relationship.** This portion of the statute precludes public officials from having an employment or contractual relationship with a business entity doing business with the agency, or having employment or contractual relationships that create a continuing or frequently reoccurring conflict between the official's private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. Particularly in small communities, this provision can be difficult. It has the added requirement that the public official, in the event of such conflict, must choose between continuing in office or continuing the employment or contractual relationship. This often leads to a fairly harsh result, and that fact is acknowledged by the Commission on Ethics. This portion of the statute is highly dependent on the facts of each situation.
- 6. Disclosure or Use of Certain Information.** As most public officials and employees are aware, they often will have access to information not generally available to members of the public. This type of information cannot be used for the official's personal gain or benefit, or the personal gain or benefit of any other person or business entity.
- 7. Nepotism.** Nepotism is the employment or promotion of

relatives. The issue is addressed in Section 112.3135, Florida Statutes. There is a specific exemption for municipalities with a population of fewer than 35,000 people, but this exemption does not apply to boards with land planning or zoning responsibilities. The term “relative” is quite broad in its scope. The public official is precluded from appointing, employing, promoting, advancing or advocating an individual who is a relative of the official. The limitation is on the individual employee as well.

General Rules

Use of the following general rules may help avoid charges of unethical behavior:

1. If you think it might be wrong, it is.
2. Don't get yourself into a situation that “tempts to dishonor.”
3. Is there anyone who gives you something who doesn't want or expect something in return, except your mother? (And you can't be sure about her.)
4. People don't give elected officials or government employees gifts because they like them, but because they want something – at best, it is a sense of obligation.
5. Can you accept a gift that does not influence you?

The Gift Law

As was previously discussed, the statute deals with the subjects of Solicitations or Acceptance of Gifts [Chapter 112.313(2)], which is essentially a bribe and is absolutely unlawful under any circumstances. The statute also deals with Unauthorized Compensation [Chapter 112.313(4)], which discusses gifts that are legal. To be legal, the elected official or employee must reasonably conclude that the gift was not given to the official to influence a vote or other action.

A City's Right to Require More Stringent Standards

Chapter 112.326, Florida Statutes, allows political subdivisions and agencies to establish more stringent standards of conduct than those specified in Chapter 112, Part III, Florida Statutes, provided that those standards don't conflict with the state statute. Several Florida communities are adopting their own ethics ordinances.

Among the cities I represent, one has established substantially more stringent gift standards, precluding gifts of any kind to a city employee, elected official or board member. This can be done by ordinance, if desired.

If people give you gifts when you are in office and you think it is because they like you, why do the gifts stop when you leave office?

Gifts

The two biggest areas of questions that I get as a city attorney are 1) conflicts of interest, and 2) gifts.

The statute contains a definition of the term “gift.” The statute is so broad that it basically covers anything of value. It covers things (tangible property), the use of things, the use of land, forgiveness of a debt, food and beverages, entrance fees and personal services, and then concludes by including “any other similar service or thing having an attributable value not already provided for in this Section.”

The term “gift” does not include salaries, benefits, fees associated with employment, political contributions, an honorarium, an award, certain honorary memberships, the use of a public facility or public property made available by a government agency for a public purpose, transportation provided to a public officer or employee by a governmental entity in relation to a officially approved governmental business, or gifts provided directly or indirectly by a state or national organization primarily composed of elected or appointed officials or staff, if your city is a member of that organization.

You can see, then, that the term “gift” is very inclusive. You should always look behind a gift as to who is the donor and ask yourself the reason

why such a gift is being given to you. Can you accept it? Do you want to accept it? What is the public perception if you accept it? If it doesn't feel right, don't accept it.

As discussed previously, you cannot solicit or accept a gift based on an understanding that you would be influenced by that gift. That is essentially a bribe, and it is absolutely prohibited. Unlike legal gifts, the amount of such a gift is not relevant. [See Chapter 112.313 (2), Florida Statutes.]

The other part of the statute dealing with gifts is titled “Unauthorized Compensation” and says that a public officer or employee will not accept anything of value when that person knows it was given to influence a vote or other action. You can accept a gift in any amount: 1) if it is not based on an understanding that your vote or judgment would be influenced by the gift, and 2) if you reasonably know that it was not given to you to influence a vote or other action.

The result of this is that you can accept a gift from most regular people. A major exception to this is gifts from lobbyists. Lobbyists are addressed in Chapter 112.3148, Florida Statutes. A lobbyist is a natural person who is paid by someone over the preceding 12 months to influence your decision making, if you are someone who is required to file public disclosure of your financial interests (or if you are a state procurement employee.)

You need to be particularly careful about lobbyists, because not only is the actual lobbyist covered by this statute, but the principal of the lobbyist is as well. That is to say, the person hiring the lobbyist comes under the same limitations and requirements as does the lobbyist. A lobbyist has to be a natural person.

Also, some agencies require lobbyists to register with the agency. Perhaps yours does, perhaps it does not. In either case, you need to identify who is a lobbyist, and you also need to identify who is the person who hired that lobbyist. You need to be particularly careful as to both.

Solicitation of Gifts

Except for very limited circumstances, you should never solicit a gift. This is true whether it is from a lobbyist or anyone else. You are specifically prohibited by the statute from soliciting a gift from a lobbyist. This limitation also includes a partner, firm, employer or principal of a lobbyist. You are allowed to solicit gifts if they are not for your personal benefit or that of another reporting individual or procurement employee, or any member of the immediate family of that person.

You are absolutely prohibited from accepting, directly or indirectly, a gift from a lobbyist if you know or reasonably believe that the gift has a value in excess of \$100. Any gift from a lobbyist that exceeds \$25 must be reported by the lobbyist. Please note that the absolute limitation on a gift from a lobbyist is \$100.

The amount of a gift from a normal person (which is unlimited) does not apply to lobbyists or the people who hire lobbyists. An example of how this limitation can sneak up on you is found in a Commission on Ethics opinion in which a state legislator accepted a gift of football tickets from a county commission chairman. The gift value was in excess of \$100. The Commission on Ethics ruled that the gift was unlawful because the county employed a lobbyist to lobby the Legislature. The commission opinion concludes that the legislator did not know that the acceptance of the gift would be unlawful.

It was a fine decision for that particular legislator, but given the fact that the commission has now issued that opinion, it is unlikely that the assumption of innocence would benefit another person in the same situation. Always look behind a gift and make sure that whoever is giving you the gift does not hire a lobbyist to lobby your city, even if the person is another elected official.

A lobbyist may give you a gift in excess of \$100 if you are accepting it on behalf of your governmental entity or a charitable organization, but you may not have custody of this gift for a period of time in excess of that necessary to arrange for its transfer to the

custody of your governmental entity or charity.

You may not solicit an honorarium related to your public duties from anyone. You may not accept an honorarium from a lobbyist for any reason.

Theoretically, you can accept a gift of any amount (except from a lobbyist and the principal of a lobbyist) as long as you reasonably know that it was not given to you to influence a vote or other action. Obviously, the greater the gift in amount or value, the more likely it is that it will influence you in some fashion. Any gift creates a sense of obligation under the theory of “reciprocity.” However, the law presumes that you can receive a gift in any amount that does not influence you as to your public duties.

Exceptions

There are certain statutory exemptions [Chapter 112.313(12), Florida Statutes] to the limitations as described in “Doing Business with One’s Agency” and “Conflicting Employment or Contractual Relationship.”

These limitations can be waived as to advisory boards by the appointing body (normally a city commission or city council) upon full disclosure to the appointing body prior to the waiver, and an affirmative vote by that body by a two-thirds majority.

Other exceptions are: 1) a rotation system; 2) competitive bidding with no participation by the official and no effort to persuade agency employees, and filing a statement disclosing the official’s interest or the interest of the official’s spouse or child; 3) purchase or sale of legal advertising, utilities service or for passage on a common carrier; 4) an emergency purchase; 5) a sole source of supply with full disclosure; and 6) if the total amount of the transaction is less than \$500 per calendar year. There are certain exemptions for stockholders, officers or directors of banks that will not bar a bank from becoming a depository for public funds. There is an additional exemption for elected public officers having conflicting employment or contractual relationships, if that officer maintains an employment relationship with a

501(c) IRC tax-exempt organization that enters into a business relationship with the officer’s agency and: 1) the officer’s employment is not directly or indirectly compensated as a result of such contract; 2) the officer in no way participated in the agency’s decision to contract; and 3) the officer abstains from voting.

Chapter 112.3143(3)(b), Florida Statutes, provides an exception to the voting prohibition because of conflict for a commissioner of a community redevelopment agency.

Limitation on Appearances and Lobbying by Employees and Elected Officials

A person who has been elected to a municipal office may not personally represent another person or entity for compensation before the governing body of the city for a period of two years after vacating office. There are also specific limitations on local government attorneys.

City Employees Holding Office

An employee of a city is precluded from holding elective office as a member of a city commission or city council while that employee continues to work for the city. In other words, you can’t be both an employer and an employee within the same city government.

Limitation on Appointed Official Representation

A city has the right to adopt an ordinance providing that an appointed officer or a regular employee may not personally represent another person or entity for compensation before that city for a two-year period following vacation of the office or termination of the employment (except for the purposes of collective bargaining). Your city has to adopt an ordinance to this effect, and if it has not already done so, it should seriously consider this type of limitation in order to avoid the appearance of conflict. Elected officials are not allowed to conduct lobbying activities for a period of two years, and it seems logical that this same type of limitation should pertain to appointed officers and employees.

Duty to Vote

Chapter 286.012, Florida Statutes, requires members of municipal governmental boards or commissions who are present in a meeting to vote unless and except “there is, or appears to be, a possible conflict of interest” pursuant to Chapter 112. Failure to vote requires the filing of the disclosure requirements, both orally and in writing. The bottom line on this is that if you are an elected or appointed official on a board that is voting on a matter, you must vote unless you have a conflict of interest.

Voting Conflicts

The law on voting conflicts is found in Chapter 112 at Section 112.3143, Florida Statutes. This is probably the portion of the ethics law that creates more questions than any other (with the possible exception of the gift law). Most city attorneys deal with voting-conflict questions on a fairly frequent basis.

For there to be a voting conflict, the matter being voted on must inure to the officials “special private gain or loss,” or to the gain or loss of a principal by whom such official has been retained or to a relative or business associate. As previously mentioned, a specific exception is found in this statute for commissioners of community redevelopment agencies.

The Commission on Ethics has devised two basic rules to determine whether or not a conflict of interest exists. They are:

- a. The size of the class test, and
- b. Remote and speculative test.

Commission on Ethics decisions boil down to a 1 percent rule for the size of the class test. In other words, if the number of people or properties being affected by a particular vote is so sizeable that the elected official’s interest represents 1 percent or less of that class, no conflict of interest exists because the elected official’s interest in the matter is not “special,” meaning it is enjoyed by a large number of people or properties.

The remote and speculative test provides that if there is uncertainty at the time of the vote as to whether there will be any gain or loss to the elected official, then there is no special private gain or loss that can be identified.

In the event that an elected official or appointed official has some concern about whether or not a voting conflict exists, the best practice is to discuss the matter with the attorney for the entity and request that the attorney’s opinion be rendered in writing. Not voting and declaring a conflict in a questionable situation is almost always without risk, and, often is seen as a careful and responsible decision.

My experience has been that the great majority of elected officials want to act ethically. Most violations are committed unintentionally and without forethought.

Conduct If There Is a Conflict

The voting-conflicts portion of the ethics law (Chapter 112.3143, Florida Statutes) treats appointed and elected public officials somewhat differently.

An elected public official may not vote if there is a conflict, and prior to the vote being taken must reveal the conflict, abstain from voting and file the necessary written document explaining such conflict within 15 days. That document must be incorporated into the minutes of the meeting. (City clerks should be aware of this.) State officers may vote.

An appointed public officer may not participate or vote in a conflict situation and must file a written memorandum reflecting such conflict prior to the meeting at which the matter is considered. This memorandum also must be incorporated into the minutes of the meeting, must be provided to the other members of that board or committee, and must be read publicly at the next meeting held subsequent to the filing of the written memorandum. If the conflict is unknown prior to the meeting, a disclosure has to be made

orally at the meeting following when the conflict is known, a written memorandum has to be filed within 15 days, the memorandum must become part of the minutes, and the memorandum has to be distributed to the other members of the agency and read publicly at the next subsequent meeting.

In the instance of an appointed public officer being considered for appointment or reappointment, the appointing body is supposed to consider the number and nature of the memorandums of conflict filed.

There is an interesting distinction between the duties of an elected official and an appointed official. The elected official must state the conflict,

but there is nothing in the statute that appears to limit the participation of the elected official on the matter before the elected body. The fact of the conflict only needs to be made public

prior to the vote. This could obviously occur long after the elected public official gave his or her opinion on the issue and attempted to persuade the other members of the city commission or city council to a particular decision.

An appointed public official is much more restricted because that official cannot “participate” without first disclosing the conflict. The statute defines the term “participate” to mean any attempt to influence the decision by oral or written communication. From the reading of this statute, it appears that an elected official can attempt to influence a decision even though that official has a conflict. Appointed officials are not so privileged. There must have been a public-policy reason why the statute was written this way, but it seems to me that if elected officials took full advantage of their ability to try to influence a vote, and then declared a conflict at the last second before the vote was actually taken, the public would have a hard time understanding why this was proper ethical behavior. Surprisingly, state officials can participate and vote in a conflict situation.

My advice to clients is that if a voting conflict is known, it should be announced as soon as possible. Usually they are known well before the meeting, if the commissioners or council members are diligent in reviewing the materials distributed to them before the meeting. The smart ones clarify the conflict issue, determine what they must do, and give me a call to get my opinion on it as well. Even if I have told them there is no legal conflict, I encourage them to bring the matter up at the meeting, get it on the record, and have me tell them in a public forum that they do not have a voting conflict.

Further, I advise my clients to leave the dais and absent themselves from the room, if that is possible. I think that the appearance of someone with a voting conflict sitting on the dais during the discussion (even if not participating in the discussion) sends a bad message to citizens. Eye rolling, nodding, smiling and other types of body language certainly are a form of communication. I think the public and the elected official are best served by complete non-participation. Most citizens' opinion of their government is usually not particularly high, and, at the moment, is at a particularly low point. We can all improve the public's opinion of government officials and employees by not only acting ethically, but doing everything we can to appear to act ethically. Merely obeying the dictates of the statutes sometimes is not enough.

Conclusion (Almost)

The foregoing is truly a brief discussion of the ethics law. It does not begin to cover the subtleties or complexities of that law. I have not addressed all the rules on the various filings that are required annually and quarterly. I have not addressed how gifts are valued. A reading of Part III of Chapter 112, Florida Statutes, is advised. There is much detail that a brief discussion of the law cannot cover.

Penalties

The penalties for violating the ethics law in Florida are extensive. They

are found in Chapter 112.317, Florida Statutes. They include impeachment, removal from office, suspension from office, public censure and reprimand, forfeiture of salary, civil penalties and restitution. The penalties described by statute do not limit the power of the city to discipline its own officers and employees in addition to the statutory penalties. Criminal penalties also apply when criminal laws are violated.

For elected officials, the statute specifically provides that a violation of the ethics law constitutes malfeasance, misfeasance and neglect of duty for the purposes of removal from office. If the violation of the ethics statute rises to the point of being a felony, Chapter 112.3173, Florida Statutes, provides that a public officer or employee forfeits all rights under a public retirement system. In addition to those penalties, the status of a public official or public employee in their community and among their friends would be greatly affected. If nothing else, the public embarrassment of being found in violation of this statute should be more than enough motivation to discourage questionable behavior.

My experience has been that the great majority of elected officials want to act ethically. Most violations are committed unintentionally and without forethought. These are unfamiliar rules. If you have been elected or appointed recently, it is possible you have not been fully briefed on them. Reference to standard business ethics is not enough. A pure heart is not enough — *learn the statute*.

Consult Your Attorney

In most circumstances, the very best and first step that you can make is to consult with your city attorney. If the issue is a matter of some consequence, ask your attorney for an opinion in writing or that the opinion be given orally at a public meeting.

If you are in a very difficult situation with great consequences, you may wish to follow this up by getting either a formal or informal opinion from the Florida Commission on Ethics. Remember: A formal opinion has the ef-

fect of law. Treat these issues seriously, for they have serious consequences.

Final Advice

The ethics statute is hard to navigate, and it is complex. Get proper advice when an issue arises. There are lots of opinions decided by the Commission on Ethics that explain the law, or, at least, help us to understand the law. (See www.ethics.state.fl.us.) A review of these opinions and the court cases interpreting the statute is best accomplished with legal help.

Also consult your inner ethical compass. Most people will be able to identify situations that at least raise a red flag requiring further study, or may just discourage an act that will come back to haunt you. Most elected officials enjoy the prerogatives of their office, but be careful in using them in circumstances that bring a question to your mind. Nobody gives you gifts because they like you, except longtime friends and family members. If they didn't give you gifts before you got elected to office, be careful about accepting them when an elected official. By the way, gifts from relatives are an exception to the definition of "gifts" in the statute. Using your office to get a benefit for yourself or others that you couldn't accomplish without that office is probably going to violate the statute.

There are criminal statutes and case law (common law) that also come into play in proper circumstances.

Finally, occasionally refer back to the five "general rules" provided earlier in this article. They are a pretty good litmus test. It is very difficult to "serve two masters," you should do everything you can to avoid a situation that "tempts to dishonor," and the guiding principal in Florida ethics law is "A public office is a public trust."

John Hubbard has been a city attorney since January 1972, and has been city attorney of Dunedin since 1974. He has also served as city attorney for several other municipalities in Pinellas County, including Belleair Beach, Belleair Bluffs, Oldsmar and Tarpon Springs.