

Ethically Speaking

State Laws Cover Appointed Board Members

by Bonnie J. Williams

I believe it is fair to say that there are more misunderstandings about the applicability of state ethics laws to members of advisory boards than there are with respect to any other category of public servant. The misunderstandings are understandable, however, in light of the numbers of ethics statutes and the plethora of distinctions and exemptions within them. It is my hope that the following information will assist appointed board members in becoming familiar with the range and breadth of these laws.

Financial Disclosure

The financial disclosure law has changed over the years in the way it addresses those appointed board members who are required to file. While the law once stipulated that members of advisory bodies (meaning those bodies that were solely advisory in nature) did not have to file financial disclosure, current law abandons this distinction and requires disclosure of the members of the following local appointed boards:

- An expressway authority or transportation authority
- A community college or junior-college district board of trustees
- A board having the power to enforce local code provisions
- A planning or zoning board
- A board of adjustment
- A board of appeals
- Any other board having the power to recommend, create, or modify land planning or zoning (with the exception of citizen advisory committees, technical coordinating committees, and such other groups that only have the power to make recommendations to planning or zoning boards)
- Any other appointed member of a local government board who is required to file disclosure by the appointing authority or the enabling legislation, ordinance or resolution creating the board.

The last of the above categories, the so-called “local government option,” is the trickiest. Even though one’s position may not meet the criteria contained within any of the first seven categories of boards – and even though one’s authority and responsibility on a board may be perceived to be solely advisory in nature – the local government itself may have opted to have members of that board file disclosure. Local governments have been inconsistent in their handling of notification, so it is wise to question the board’s attorney as well as the local financial-disclosure coordinator about one’s responsibilities in this regard. This is particularly important because late and non-filers are automatically fined \$25 per day, up to a maximum of \$1,500, for noncompliance.

Conflicts of Interest

Another reason to be confident about one’s disclosure status is that one, and only one, of the conflict of interest laws applies strictly to persons who file financial disclosure. This is the law that prohibits a public official from accepting a gift worth in excess of \$100 from a person or agent of a person who for compensation seeks, or sought within the past 12 months, to influence decision-making within the official’s public agency. This would include those persons traditionally thought of as lobbyists, as well as vendors and other persons employed to influence governmental decisions. This law further requires the reporting of other gifts valued in excess of \$100 on a quarterly basis. The only exception to these requirements are gifts from relatives. Full information about this and other ethics requirements is available on the Florida Commission on Ethics’ Web site at www.ethics.state.fl.us.

Other conflict-of-interest laws apply equally to all public officers, elected and appointed, and all public employees, although there are some exemptions pertinent to appointed board members. Following are prohibitions contained in the statutes:

- Do not ask for or accept anything of value based on an understanding that it will influence you in your public duties.
- Do not accept anything of value when you know, or should know, that it was given to influence you in the discharge of your public duties.

- Do not use your public position or public resources to obtain a special benefit for yourself or anyone else.
- Do not use or disclose information gained by virtue of your of your public position and not available to the public for personal benefit.
- Do not advocate the appointment, employment, promotion or advancement of a relative to or within your public agency.
- Do not purchase, rent or lease for your agency from your or your spouse's or child's business; and do not rent, lease or sell to your agency or any agency within your political subdivision from your business.
- Do not hold any employment or contract with a business or agency regulated by or doing business with your agency, or which will pose a conflict between your private interests and public duties.

There are a number of exemptions to the last two prohibitions above (conflicting business, employment and contractual relationships), including those relating to depositories of public funds; passage on common carriers; contracts awarded by sealed, competitive bid; emergency purchases; legal advertising; rotation system; sole sources of supply; and utilities services. Additionally, the prohibitions relating to business and employment relationships may be waived in a particular instance for a member of an advisory board by the body or person who appointed the board member with the conflict.

Voting Conflicts of Interest

A voting conflict of interest arises when an official is called upon to vote on a measure that would result in the special private gain or loss of the official, of a principal by whom the official is retained, of a relative, or of a business associate. Appointed local officials are required to abstain from voting in such instances and to file, within 15 days, a Memorandum of Voting Conflict (Commission on Ethics Form 8B), if they elect not to make any attempt to influence the decision. If an appointed official chooses to participate in discussion of the vote, or otherwise try to influence the outcome by oral or written communication, he or she may do so but must either (a) file a Memorandum of Voting Conflict prior to the meeting so that the memorandum can be provided to other members of the board and read publicly at the meeting, or (b) make the disclosure orally at the meeting before participating, followed by the filing of the Memorandum of Voting Conflict. Whether or not one chooses to so participate, abstention from the actual vote is required.

There are many ins and outs within the above-cited strictures, some of which are explained in more detail on the Florida Commission on Ethics' Web site (www.ethics.state.fl.us) and in its brochure "Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees." The Web site also contains copies of the commission's rules and legal opinions interpreting the law since the commission's inception in 1974. If you have questions about any of this information, or if you have a personal issue on which you need guidance, you are encouraged to telephone the commission office at (850) 488-7864 to discuss the situation with an experienced staff member. We pride ourselves on providing prompt service. It is unlikely that your issue will be a novel one, given the many years of opinions and complaint adjudications, but a formal opinion from the commission is an option if staff is unable to comfortably respond based on precedent decisions.

Finally, the commission's Web site contains a link to a training course on the ethics laws and the public meetings and records laws, prepared by commission staff and staff of the attorney general in conjunction with The John Scott Dailey Florida Institute of Government (<http://iog.fsu.edu/>). Those persons interested in a more comprehensive understanding of these laws related to preservation of the public trust in government are encouraged to enroll.

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