

Sunshine Law and Public Records

F.S. Ethics training for specified constitution officers and elected municipal officers - §112.3142(2)(b) Beginning January 1, 2015, *all elected municipal officers must complete 4 hours of ethics training each calendar year* which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

The law specifies that the four hours be taught with these components:

- » Two hours of Florida Ethics Law (Chapter 112, Florida Statutes)
- » One hour of Open Meetings (Chapter 286, Florida Statutes)
- » One hour of Open Records (Chapter 119, Florida Statutes)

[http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AKBS9L/\\$file/2017+Sunshine+Law+Manual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AKBS9L/$file/2017+Sunshine+Law+Manual.pdf)

<https://www.floridabar.org/wp-content/uploads/2017/04/2016-overview-of-sunshine-and-public-records-laws.pdf>

The above-mentioned information is provided to you because once you become a qualified candidate, please be careful about discussing matters that you may be voting on if you are elected. You are encouraged to avoid any appearance of impropriety.

Your packet contains excerpts from The Florida Municipal Officials' Manual, provided by the Florida League of Cities. The City of Edgewood is a member of the Florida League of Cities. The excerpts provided are: (1) § 3-1 Overview of Informal and Formal standards of conduct, (2) § 302 Constitutional Provisions, (3) § 3-3 The Code of Ethics and (4) § The Commission on Ethics. These are only excerpts but provide information that will hopefully guide you in the right direction.

Additionally, the links above are to the Florida Sunshine Manual and an overview of the Sunshine Manual. At minimum review the overview, as you will learn how your personal cell phone can be subject to a public records requests. You will learn what is considered a public meeting and when is a notice required if one or more Council members attend other meetings together. You will learn about the gift law. The Sunshine Law covers so much more and you are encouraged to familiarize yourself with the laws that affect you as an elected official.

Section 3-1

Overview

Municipal officials are governed by both formal and informal standards of conduct. **Informal** standards of conduct exist as social norms of the nation, the community, particular community and professional groups, and the particular municipal body or agency of which an individual is a part. **Formal** standards of conduct exist as constitutional provisions, laws, municipal ordinances and resolutions, and – for employees – administrative rules and regulations.

In Florida, many formal standards of conduct for municipal officials are embodied in the Constitution and in state law. These various standards are scattered in the Constitution and Florida Statutes; they are not all to be found in one place. Thus, the oft- mentioned “Sunshine Amendment” (art. 2, sec. 8, Florida Constitution) contains only a small part of the complete set of formal standards. The Code of Ethics for Public Officers and Employees (ch. 112, part III, F.S.), while more extensive than the Sunshine Amendment, also contains only part of the entire set of standards of conduct (ss.112.311-112.326, F.S.).

In this part of the manual, separate attention is given, first, to constitutional provisions pertaining to standards of conduct of public officials and then, in succeeding chapters, to statutory requirements.

Section 3-2

Constitutional Provisions

The Florida Constitution contains little that pertains to the conduct of municipal officers. Such as there is can be found in two sections of the Constitution, Articles II and IV.

A. THE SUNSHINE AMENDMENT (ART. II)

Article II, Section 8 was added to the Florida Constitution in 1976 by means of the initiative process; it is commonly identified as the “Sunshine Amendment” (which is not the same thing as the “Sunshine Law”). Municipal officials are unaffected by some of its provisions, including its “full and public disclosure of financial interests” provision (art. II, s. 8(a)). Those provisions which do apply to municipal government are as follows:

1. Article II, Section 8(b)

“All elected public officers and candidates...shall file full and public disclosure of their campaign finances.” This provision is implemented by s. 106.07, F.S.

2. Article II, Section 8(c)

“Any public officer or employee who breaches the public trust for private gain... shall be liable to the state for all financial benefits obtained by such actions.” Enforcement of this provision is provided by s. 112.316, F.S.

3. Article II, Section 8(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...” This provision is implemented by s. 112.3173, F.S.

These sections are supplemented by state law in Chapter 112, and are frequently updated by the Legislature. Officials are encouraged to check with their attorney for regular updates on changes to the law.

B. POWERS OF THE GOVERNOR (ART. IV)

The state governor is granted several powers in order that he might oversee the conduct of municipal affairs and the personal conduct of individual municipal officers.

1. Article IV, Section 1(a)

The governor “may require information in writing from all executive or administrative...municipal officers upon any subject relating to the duties of their respective offices.”

2. Article IV, Section 1(b)

“The governor may initiate judicial proceedings...against any executive or administrative...municipal officer to enforce compliance with any duty or restrain any unauthorized act.”

3. Article IV, Section 1(d)

The governor may call out the militia to preserve peace and to enforce the laws of the state within a community.

4. Article IV, Section 7(c)

“By order of the governor any elected municipal officer indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension...unless these powers are vested elsewhere by law or the municipal charter.”

REFERENCES

Florida Constitution: Article II, Sec. 8; Article IV, Secs. 1 and 7(c). Florida Law: Chs. 112, 386, 199, 106
“Government In The Sunshine” Manual – published by the First Amendment Foundation – Phone 1-(800) 337-3518.

Section 3-3

The Code of Ethics

An important part of the formal standards of conduct for municipal officials in Florida is the “Code of Ethics for Public Officers and Employees,” which was enacted in 1967 as Chapter 67-469, Laws, and, as subsequently amended, codified as Chapter 112, Florida Statutes. This code applies to elected municipal officers, municipal employees, and persons appointed to municipal positions, including members of advisory bodies. Some specific standards also apply to candidates for elective positions.

A. PREAMBLE

The Code of Ethics contains noble language in its opening section:

- (1) 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...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.

- (5) It is hereby declared to be the policy of the state that no officer or employee...shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees...in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

- (6) 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. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics...regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.

B. STANDARDS

Certain standards of conduct are enumerated in Chapter 112, Florida Statutes; some of these are summarized below.

1. Prohibition of Solicitation or Acceptance of Gifts

No public officer, employee..., or candidate...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.

2. Prohibition of Doing Business With One's Agency

An officer or employee, when acting in official capacity, shall not, either directly or indirectly, purchase, rent, or lease any realty, goods, or services from any business entity of which the officer or employee, spouse, or child is officer, partner, director, or proprietor or in which he or she, spouse, or child has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the municipality or any agency thereof.

3. Prohibition of Accepting Compensation Given to Influence a Vote

No public officer, employee of an agency, or local government attorney or spouse or minor child shall accept any compensation, payment, or thing of value when the person knows, or, with reasonable care, should know that it was given to influence a vote or other action.

4. Prohibition of Misuse of Public Position

A public officer, employee, or local government attorney shall not corruptly use or attempt to use one's official position or any property or resource which may be within one's trust, or perform official duties, to secure a special privilege, benefit, or exemption.

5. Prohibition of Conflicting Employment or Contractual Relationships

No public officer or employee shall hold any employment or contractual relationship with any business entity or agency which is subject to the regulation of the agency of which one is an officer or employee or which does business with said agency; nor shall an officer or employee have any employment or contractual relationship that will create a continuing or frequently recurring conflict between one's private interests and the performance of public duties or that would impede the full and faithful discharge of public duties. Reference Florida Statutes for exceptions to this standard.

6. Prohibition of Misuse of Privileged Information

No public officer, employee of an agency, or local government attorney shall disclose or use information not available to members of the general public and gained by reason of one's official position for one's own personal gain or benefit or for the personal gain or benefit of any other person or business entity.

7. Post-Employment Restrictions

A person who has been elected to any municipal office may not personally represent another person or entity for compensation before the governing body of which he was an officer for a period of two years after he vacates that office. The governing body of any municipality may adopt an ordinance providing that an appointed municipal officer or employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of two years following vacation of office or termination of employment, except for the purpose of collective bargaining.

8. Prohibition of Employees Holding Office

No person may be, at one time, both a municipal employee and a member of the city council.

9. Prohibition of Nepotism

Nepotism is the practice of showing favoritism to relatives, especially in the awarding of jobs. A municipal officer or employee vested with the power to appoint, employ, promote, or advance individuals or to make recommendations concerning such, shall not appoint, employ, promote, or advance, or advocate for such benefit, to a position over which he or she exercises jurisdiction, any relative. "Relative" includes parents; uncles, aunts, and first cousins; siblings, their spouses, and their children; spouses and their parents; children and their spouses; stepparents, stepsiblings, and stepchildren; and half-siblings.

An individual may not be appointed, employed, promoted, or advanced if such action has been advocated by a public official, who is a relative, serving in or exercising control over an agency. Cities with populations less than 35,000 have exemptions in this; the city attorney can advise on these.

10. Requirements to Abstain From Voting

A municipal officer shall not vote in official capacity upon any measure which would affect his or her special private gain or loss, or which he or she knows would affect the special gain or any principal by whom the officer is retained. When abstaining, the officer shall state, prior to the vote being taken, the nature of his or her interest in the matter. Within 15 days, the officer shall disclose the nature of his or her interest as a public record in a memorandum. If a municipal officer should violate these rules by casting a vote on a matter in which he or she should have abstained, he or she shall, within 15 days, disclose the nature of the interest as a public record in a memorandum.

Notice should be made here of a related prohibition of voting. If a person is both a city council member and an "officer, director, or employee of a financial institution which is interested in purchasing or serving as trustee or co-trustee for a proposed or outstanding bond issue," the person shall not vote on "any matter related to such bond issue" after the bank's interest in the bond issue becomes known to him or her.

11. Requirement of Disclosure of Personal Interests

An appointed municipal officer shall not "participate" in any matter which would affect the officer's special private gain or loss, the special gain or loss of any principal, parent organization or subsidiary by whom the officer is retained, or the special gain or loss of a relative or business associate, without first disclosing the nature of the interest in the matter. "Participate" means "any attempt to influence the decision by oral or written communication whether made by the officer or at his or her discretion." The disclosure should be made in a written memorandum prior to the meeting at which the matter is discussed, in which case the memorandum shall be read publicly at the meeting prior to the consideration of this matter. If this is not done, the disclosure is to be made orally at the meeting, with a written memorandum to be filed within 15 days.

12. Requirement of Disclosure of Financial Interests

The following persons must file a statement of financial interests no later than July 1 of each year: persons occupying an elective municipal office; appointed members of city boards, commissions, and authorities, other than those which are only advisory in function, but including bodies which exercise "planning, zoning, or natural resources responsibilities," whether advisory or not; and designated city employees. In addition, candidates for elective office must file a statement of financial interests at the time of filing qualifying papers, and any appointed officer must file a statement of financial interests within 30 days from the appointment.

The statement of financial interests must be filed even if the reporting person holds no financial interests requiring disclosure, in which case the statement shall be marked "not applicable." Otherwise, the statement shall include identification of the reporting person's (a) sources of income (personal and business), and (b) properties owned. Campaign contributions otherwise reported need not be included in this statement. Also to be included are certain liabilities, namely, "every liability which in sum equals more than the reporting person's net worth." By June 1 of each year, the county supervisor of elections is required to file a statement of financial interests. Statements should be filed by July 31 of each year.

13. Requirement of Disclosure of Clients Represented

Each local officer shall file a quarterly report with the county supervisor of elections giving the names of clients represented by the officer or any partner or professional associate for a fee or commission, except for ministerial matters, before local- government agencies. Certain exclusions from this requirement are included in state law. The supervisor of elections is required to send a copy of a prescribed form for this disclosure to each person required to file it. Statements should be filed no later than 15 days after the last day of the quarter.

14. Disclosure of Contributions

An elected municipal official must file an annual statement listing all contributions received, other than campaign contributions, and the disposition made of such contributions. The names and addresses of contributors and of receivers of funds must be given, and the dates of transactions. Check the statute with your city attorney for the latest requirements.

15. Solicitation and Disclosure of Honoraria

Honorarium is payment of money or anything of value, directly or indirectly, to a municipal officer or to any other person on his or her behalf as consideration for a speech, address, oration, or other oral presentation by the reporting individual regardless of how presented, or a writing by the reporting individual, other than a book which is not intended to be published. Honorarium does not include payment for services related to employment held outside the municipal officer's public position or the payment or provision of actual and reasonable transportation, lodging, food, and beverage expenses related to the honorarium event for a municipal officer and spouse.

A municipal officer may not solicit honorarium which is related to his or her public office duties, nor may the officer accept honorarium from a political committee, a lobbyist of his or her agency or an employer, principal, partner, or firm of such a lobbyist.

A municipal officer who receives payment or provision of expenses related to any honorarium event from a person prohibited from paying honorarium, shall publicly disclose on an annual statement the name, address, and affiliation of the person paying or providing the expenses, the amount, the date of the event and a connection with the event. This annual statement shall be filed with the financial disclosure statement; the form for this statement is available through the supervisor of elections.

C. ENFORCEMENT AND PENALTIES

Violation of any standard or requirement of the Code of Ethics by a public officer (elected official, certain employees, and certain appointees to commissions, boards, and advisory committees) shall constitute malfeasance, misfeasance, or neglect of duty within the meaning of Article IV, Section 7, Florida Constitution and may be subject to appropriate criminal penalties under state law. Elected and appointed officials should review all statutory penalties, each year, to be familiar with changes in the law.

1. Suspension and Removal

Alleged violations of the Code of Ethics are investigated by the Florida Commission on Ethics, which has no punitive powers other than the publicizing of its findings. However, the commission may recommend punitive actions to the attorney general, who shall bring civil action to recover any civil penalty or restitution penalty recommended by the commission, or to the governor. The governor may suspend a city officer, and the Senate may remove from office or reinstate a suspended official. (See "Suspension and Removal of Public Officials" in this manual.)

2. Forfeiture of Retirement Benefits

A municipal officer or employee shall forfeit all retirement benefits to which otherwise entitled by virtue of municipal service (except for the return of his or her contributions) if convicted of a specified offense committed prior to retirement or if office or employment is terminated because of a specified offense.

D. COMPLAINTS ("WHISTLE-BLOWERS")

1. Confidentiality of Information

When an internal auditor or inspector general receives an ethics complaint from an individual, the name or identity of the individual shall not be disclosed to anyone other than the internal auditor or inspector general without written consent of the individual, unless the internal auditor or inspector general finds the disclosure unavoidable during the course of the audit.

2. Investigative Procedures

The procedure for investigating information given by an employee or former employee of a governmental agency (including a municipal entity) to the Office of the Chief Inspector General or to the agency inspector general as provided by law. This section only applies to the disclosure of information which includes:

1. a violation of any federal, state, or local law, rule or regulation which creates and presents a danger to the public's health, safety or welfare;
2. any act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

3. Statute of Limitations

All sworn complaints alleging a violation of Chapter 112 or any other breach of public trust under its jurisdiction shall be filed with the commission within five years of the alleged violation. The complaint and all related material shall remain confidential.

4. Frivolous Complaints

If the commission should find that a complaint was filed "with a malicious intent to injure the reputation of such officer or employee by filing...with knowledge that the complaint contains...false

allegations...,” the complainant shall be liable for costs plus reasonable attorney’s fees. A person filing such a complaint may also be punished for perjury or for improper public disclosure of a complaint.

E. ADDITIONAL REQUIREMENTS

“Nothing in this act shall prohibit the governing body of any political subdivision...from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part...”

REFERENCES

Florida Statutes: Chapter 112.

Section 3-4

The Commission on Ethics

The Florida Commission on Ethics was created by a statute in 1974, codified as Chapter 112, Part III, Florida Statutes. As stated, the commission's role is "to serve as guardian of the standards of conduct" for state and local government officers and employees. In 1976, by citizen initiative, the commission's existence was made a constitutional requirement, with its primary responsibility being "to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees..."

A. COMPOSITION

The Commission on Ethics consists of nine persons. Of these, five are appointed by the governor with no more than three from the same political party, subject to confirmation by the Senate (one shall be a former city or county official); two each are appointed by the Speaker of the House and the President of the Senate, respectively. Neither the President nor the Speaker may appoint more than one member from the same political party. Terms of appointment are two years. Members serve without salary. The members elect a chairman, and the commission shall employ an executive director and staff.

B. COMMISSION'S INVESTIGATORY FUNCTION

The mission of the commission is stated in broad terms in the Florida Constitution – to investigate **ALL** complaints concerning breach of trust (emphasis added). The Legislature has not implemented its expansive treatment of the commission's purpose, however. The only statutory statement of the commission's role is that which was contained in the 1974 statute: the "duty" of the commission is as stated as that of investigating alleged violations of "the code of ethics as established in this part" (part IV, ch. 112, F.S.), and of any other breach of public trust, as established in Article II, Section 8, Const.

C. OTHER COMMISSION FUNCTIONS

Other functions of the Commission on Ethics, as stated in a commission publication, are as follows:

1. renders advisory opinions to public officials;
2. prescribes forms for financial disclosure;
3. prepares mailing lists of public officials subject to disclosure laws for use by county supervisors of elections and the secretary of state in distributing forms and notifying delinquent filers;
4. makes recommendations to disciplinary officials, when appropriate, for violations; and
5. may file suit to void contracts entered in violation of the code.

D. FORMS

Forms provided by the Commission on Ethics for use by municipal officers and employees include the following:

- Statement of Financial Interests
- Quarterly Client Disclosure
- Disclosure of Specified Business Interests
- Memorandum of Voting Conflict
- Gift Disclosure for Elected Officers

Any person in need of these forms may request them from the county supervisor of elections or from the Florida secretary of state. There also is a specific form which must be used in the filing of a formal complaint.

E. ADVISORY OPINIONS

An advisory opinion concerning interpretation of the Code of Ethics may be obtained from the Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317-5709 or 3600 Maclay Boulevard, South, Suite 201, Tallahassee, FL 32312, (850) 488-7864, www.ethics.state.fl.us. Advisory opinions "on any question of law relating to the official duties of the requesting officer" may be obtained from the Office of the Attorney General, State of Florida, The Capitol, Tallahassee, FL 32399-1050, (850) 487-1963, <http://legal.firn.edu/opinions/index.html>.

REFERENCES

Florida Constitution: Chapter 112. Laws of Florida: Chapter 74-176. Also see *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, www.ethics.state.fl.us.