**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

In re: Lori Cunningham,

Respondent. **Complaint No.: 23-002**

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ADVOCATE'S AMENDED RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint, Report of Investigation, Response to Report of Investigation Supplemental Report of Investigation, and Response to Supplemental Report of Investigation filed in this matter, submits this amended Recommendation in accordance with Rule 34-5.006(3), F.A.C. The recommendation is amended to include additional information from the Supplemental Report of Investigation regarding Allegation Two.

RESPONDENT/COMPLAINANT

Respondent, Lori Cunningham, serves as a member of the Polk County School Board. Complainant is Billy Townsend of Lakeland, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether the Respondent violated Sections 112.313(3) and 112.313(7)(a), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on July 18, 2023. The Supplemental Report of Investigation was released on November 28, 2023.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.313(3), Florida Statutes, by doing business with her agency.

APPLICABLE LAW

Section 112.313(3), Florida Statutes, provides as follows:

> 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. 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. This subsection shall not affect or be construed to prohibit contracts entered into prior to:
>
> (a) October 1, 1975.
> (b) Qualification for elective office.
> (c) Appointment to public office.
> (d) Beginning public employment.

In order to establish a violation of Section 112.313(3), Florida Statutes, the following elements must be proved:

> 1. Respondent must have been either a public employee acting in an official capacity as a purchasing agent, or a public officer acting in an official capacity.

2. Respondent must have either directly or indirectly purchased, rented or leased some realty, goods or services.

3. Such purchase, rental or lease must have been for Respondent's own agency.

4. Such purchase, rental or lease must have been from a business entity of which Respondent, Respondent's spouse or Respondent's child is an officer, partner, director or proprietor, or in which Respondent, Respondent's spouse or Respondent's child, or any combination of them, has a material interest.

OR

1. Respondent must have been either a public officer or employee acting in a private capacity.

2. Respondent must have rented, leased or sold realty, goods or services.

3. Such rental, lease or sale must have been to Respondent's own agency, if Respondent was a state officer or employee, or to Respondent's political subdivision or an agency thereof, if Respondent was serving as an officer or employee of that political subdivision.

ANALYSIS

Since 2004, Respondent has served as a member of the Polk County School Board. (ROI 8) In addition, she owns Applied Images, Inc. which was incorporated in 2011.[1] (ROI 8) Applied Images is a business that, at minimum, sells school uniforms. (ROI 8, 10)

Complainant, a former school board member, alleges Applied Images is selling mandated school uniforms to certain schools within the School District. (ROI 2, 3, 5) The allegations involve Dundee Elementary Academy Magnet School (DEA), a public school, and Lake Wales Charter

[1] In 2011, Respondent had a business partner but purchased the partner's interest in 2014. (ROI 8)

Schools which include Edward W. Bok Academy South, Edward W. Bok Academy North, and Lake Wales High School (LWHS). (ROI 2, 3, 6)

Section 112.313(3) does not apply to the allegation regarding the charter schools because charter schools are not considered part of a school board member's political subdivision. (Determination of Investigative Jurisdiction and Order to Investigate – Footnote 2). Accordingly, the analysis will only be applied to the allegation in association with the DEA.

Respondent advised that she sold uniforms to parents of DEA students but not directly to the school. (ROI 9) In CEO 10-12, in an analysis that applies to Sections 112.313(3) and 112.313(7), Florida Statutes, the Commission on Ethics opined that a violation would not occur where a school board member's company sold uniforms to parents of school children and not to the school district or the district's schools. However, the Commission warned against the personal solicitation of school personnel who may feel pressured to purchase from a school board member.

Polk County Superintendent Frederick Heid advised that Polk County Schools (PCS) only advise parents that uniforms are required but never direct parents to purchase them from a certain vendor. (ROI 13, 15) He advised that he had no knowledge of Applied Images selling uniforms on any PCS campus. (ROI 15)

Dr. Lana Tatom-Headley has served as the DEA principal for the past six years. (ROI 37) Dr. Tatom-Headley advised that Applied Images has never been the sole uniform vendor for DEA. (ROI 37, 38) While students who could not afford uniforms have been assisted with receiving uniforms via private donations, teachers, and herself personally, Dr. Tatom-Headley has no recollection of DEA directly purchasing uniforms from Applied Images. (ROI 38) Outside of Applied Images delivering shirts to DEA, Dr. Tatom-Headley advised that neither Respondent nor Applied Images has ever come to DEA to sell uniforms. (ROI 38)

Regarding DEA, the facts in CEO 10-12 are similar to the fact pattern in this case regarding Section 112.313(3). As such, there is insufficient evidence of a violation.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(3), Florida Statutes.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.313(7)(a), Florida Statutes, by having conflicting employment that will create a continuing or frequently recurring conflict between her private interests and the performance of her public duties and/or that would impede the full and faithful discharge of her public duties.

APPLICABLE LAW

Section 112.313(7)(a), Florida Statutes, provides as follows:

> 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; 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.

In order to establish a violation of Section 112.313(7), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.

2. Respondent must have been employed by or have had a contractual relationship with a business entity or an agency.

3. Such business entity or state or agency must have been subject to the regulation of, or doing business with, the agency of which the Respondent was an officer or employee.

OR

1. Respondent must have been a public officer or employee.

2. Respondent must have held employment or a contractual relationship that will:

a) create a continuing or frequently recurring conflict between the Respondent's private interests and the performance of the Respondent's public duties;

or

b) impede the full and faithful discharge of the Respondent's public duties

ANALYSIS

The underlying facts and circumstances relating to this allegation are contained above in Allegation One. Section 112.313(7)(a), Florida Statutes, is intended to prevent situations in which private considerations may override the faithful discharge of public responsibilities. A primary objective of the Code of Ethics is that government officials avoid situations in which there is a *temptation* to place personal gain, economic or otherwise, above the discharge of one's fiduciary duty to the public. *Zerweck v. State Commission on Ethics*, 409 So. 2d 57, 60 (Fla. 4th DCA 1982).

Regarding DEA, the facts in CEO 10-12 are similar to the fact pattern in this case regarding Section 112.313(7). As such, there is insufficient evidence of a violation.

Regarding LWCS, Superintendent Frederick Heid advised that LWCS operates under the umbrella of PCS and is considered a sponsored Local Education Authority. (ROI 13, 14) He advised that some funding to LWCS passes through PCS and some funding LWCS obtains directly. (ROI 14) He further advised that "the District, as the authorizer [of Lake Wales Charter

Schools], has to ensure that the charter school is performing academically, that there are no unethical practices going on at the school, and that the school is financially solvent." (ROI 14) In CEO 97-7, the Commission opined that charter schools are, at minimum, subject to the regulation of the School Board.

LWCS Superintendent Wayne Rodolfich confirmed that uniforms are mandatory, but each LWCS has full autonomy to decide where uniforms are purchased. (ROI 19) He advised that it is his understanding that only the parents of LWCS students have purchased uniforms and not the schools themselves. (ROI 20)

Respondent advised that the uniforms are not sold on LWCS campuses. (ROI 9, 10) She further advised that she never sold uniforms directly to any LWCS school. (ROI 9)

Donna Dunson has been the LWHS principal for approximately 10 years until she retired in July 2022. (ROI 21) Prior to that, she worked at Bok Academy before it was split into two schools (Bok North and Bok South). (ROI 21)

Dunson advised that while there were other uniform vendors in the area, she decided to only do business with Applied Images and Polka Dots & Co. (ROI 21) Dunson advised that Applied Images was on LWHS's campus to sell uniforms to students prior to the pandemic. (ROI 23) In a 2012 Memorandum of Understanding (MOU) between LWHS and Applied Images, it was agreed that Applied Images would return a portion of its proceeds for the sale of the uniforms and "Friday" shirts back to the school. (ROI 9, 21, 24 Exhibit E)

Since July 2022, Anuj Saran has served as the LWHS principal and served as the assistant principal for 10 years prior. (ROI 24) Saran confirmed that uniform vendors, including Applied Images, were on LWHS's campus to sell uniforms to students prior to the pandemic.[2] (ROI 27)

[2] Almighty Printing and Action Signs also served as vendors in the 2022-2023 school year. (SROI 3, 4)

Saran further advised that there is an account, funded by private donors, that has been used to purchase uniforms from Applied Images. (ROI 25) In addition, there is another account, funded by the school's "Friday" shirt sales that has been used to make purchases from Applied Images. (ROI 25, SROI 2) There have been over $16,000 in purchases made to Applied Images since 2018. (ROI 26, Exhibit F, G, H, I) Records (i.e., an invoice) reflect a purchase from Applied Images on October 2, 2020 in the amount of $650 for "LW MASKS LWH." (ROI 28, Exhibit F)

Since January 2022, Damian Rosado has served as the principal of Bok Academy South. (ROI 31) He advised that Applied Images has not been a vendor for Bok South while he has been employed there. (ROI 31) However, he acknowledged that Bok South purchases uniforms from vendors and the school sells the uniforms to the students. (ROI 31)

Contrary to Respondent's, Superintendent Rodolich's and Rosado's statements, Bok South purchased uniforms from Applied Images. (ROI 9, 20, 32) Records (i.e., an invoice) reflect a purchase from Applied Images on September 15, 2022 in the amount of $1,066.76 for "POLO SHIRTS FOR BOK S." (ROI 32, Exhibit F) It should be noted that the check for the invoice was either signed by LWCS CFO Alricky Smith or Superintendent Rodolfich. (ROI 33)

Since 2019, Donna Drisdom has served as the principal of Bok Academy North. (ROI 34) She advised that Bok North has never purchased uniforms from Applied Images. (ROI 34)

Contrary to Respondent's, Superintendent Rodolich's and Drisdom's statements, Bok North purchased uniforms from Applied Images. (ROI 9, 20, 35) Records (i.e., invoices) reflect purchases from Applied Images on January 19, 2022 in the amount of $470 for "DRI FIT JACKETS BOK N" and on September 13, 2022 in the amount of $1,066.76 for "POLO SHIRTS FOR BOK N." (ROI 32, Exhibit F) It should be noted that the check for the invoice(s) was either signed by LWCS CFO Alricky Smith or Superintendent Rodolfich. (ROI 36)

Respondent's current legal counsel, Robin Gibson, who is also the legal counsel for LWCS, provided an opinion to her in 2012 regarding the sale of the school shirts to the schools that are a part of LWCS. (ROI 7, 9 Exhibit C) Respondent was specifically advised that the LWCS "schools should not use school money to purchase anything from a company in which a school board member has an interest." (Exhibit C2) The facts reflect that Respondent did not follow that portion of the opinion.

Respondent is a public officer. She is the sole owner of Applied Images and has no other employees. (ROI 8) In a similar situation, the Commission has opined that a public official is not shielded from a violation of this statute simply because her corporation is doing business with the public agency. See CEO 14-2. In other words, the corporate form may not be used to circumvent the Code of Ethics.

There are two analyses to review to determine if a violation exists. In the first analysis, the facts herein are inconsistent with the fact pattern in CEO 10-12 where no violation was determined because the School Board or District schools were not purchasing uniforms from the subject company. They are here. At minimum, Applied Images sold products to LWHS, Bok South, and/or Bok North, which are subject to the regulation of Respondent's agency, the School Board.

In the second analysis, Respondent's relationship with Applied Images is creating a continuing or frequently recurring conflict between her private interests and the performance of her public duties. This is evidenced by the conflicting information that Respondent and others have provided regarding where Respondent sells Applied Images' products and whether she is selling products to LWCS schools. Additionally, certain charter school(s) receive a portion of some sales of Applied Images' products.

The supplemental investigation confirmed that LWCS made purchases from Applied Images from different funding sources. (SROI 2)

There is sufficient evidence of a violation.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

1. There is no probable cause to believe that Respondent violated Section 112.313(3), Florida Statutes, by doing business with her agency.

2. There is probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes, by having conflicting employment that will create a continuing or frequently recurring conflict between her private interests and the performance of her public duties and/or that would impede the full and faithful discharge of her public duties.

Respectfully submitted this 22nd day of December, 2023.

Melody Hadley

MELODY A. HADLEY
Advocate for the Florida Commission
on Ethics
Florida Bar No. 0636045
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
(850) 414-3300, Ext. 3704

CEO 10-12 -- April 21, 2010

CODE OF ETHICS

SCHOOL BOARD CANDIDATE EMPLOYED AS PRESIDENT OF SCHOOL UNIFORM COMPANY DESIGNATED "PREFERRED VENDOR" BY MANY DISTRICT SCHOOLS

To: Name withheld at the person's request (Miami)

SUMMARY:

No prohibited conflict of interest would be created under Sections 112.313(3) and 112.313(7)(a), Florida Statutes, were a school board member to be employed as president of a school uniform company that has been designated the "preferred vendor" by many of the district's schools. The school board member's company sells uniforms to the parents of individual school children, not to the school district or its schools. However, because of the school board's authority over its personnel, a school board member would be prohibited from personally soliciting school district personnel and school-related organizations like uniform committees, parent-teacher organizations, and school advisory councils to designate his company as the "preferred vendor" for a school's uniform.

QUESTION:

Would a prohibited conflict of interest be created where you, a candidate for the school board, are employed as president of a school uniform company that is designated the "preferred vendor" by nearly half of the district's schools that require uniforms?

Under the circumstances presented, your question is answered in the negative.

In correspondence with our staff, you explain that your family owns a uniform company and that you have been employed as its president for twenty years. A majority of the public schools in Dade County have instituted a mandatory uniform policy pursuant to the procedures set forth in Miami-Dade County Public School Board 6Gx13-5C-1.031. This policy also allows schools to establish a uniform committee to select uniforms, and for the committee to designate a "preferred vendor." In this regard, the School Board's policy states:

> Schools are eligible to participate in a mandatory uniform program, if the following conditions are met:
>
> . . .
>
> B. The school establishes a uniform committee that adequately represents administrators, teachers, students, and parents and follows guidelines promulgated by the Superintendent for selection of uniforms. The committee cannot select a uniform committee as an "official uniform company" for a school. The committee can identify a uniform company as a "preferred" option; however, parents must be advised that the selected uniform or a generic option can be purchased from a variety of sources, such as other uniform companies, department stores, catalogs, etc. School patches or logos are optional.
> [Rule 6Gx13-5C-1.031]

You indicate that your company has been designated the "preferred vendor" in over 150 of the District's schools. You explain that the "preferred vendor" program is an informal, non-contractual, non-exclusive relationship between individual schools and their "preferred" choice of a school uniform vendor. The schools send out correspondence to parents and list on the school's website information about the school's uniforms that

includes the "preferred vendor's" name, along with an explanation that uniforms may be purchased from any source, not just from the "preferred vendor." You question whether your employment with a school uniform company and its designation as "preferred vendor" by many of the District's schools would create a prohibited conflict of interest if you were to be elected to the School Board.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> 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. 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. This subsection shall not affect or be construed to prohibit contracts entered into prior to:
> (a) October 1, 1975.
> (b) Qualification for elective office.
> (c) Appointment to public office.
> (d) Beginning public employment. [Section 112.313(3), Florida Statutes (2009).]
>
> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.— 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, . . . ; 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. [Section 112.313(7)(a), Florida Statutes (2009).]

Absent "grandfathering" or the applicability of an exemption under Section 112.313(12), Florida Statutes, the first part of Section 112.313(3) prohibits a public officer acting in his official capacity from purchasing goods from a business entity of which he is, among other things, an officer, and the second part of Section 112.313(3) prohibits a public officer from acting in a private capacity to sell goods to his political subdivision or any agency of his political subdivision. Also, absent grandfathering or applicability of an exemption, Section 112.313(7)(a) prohibits a public officer from holding employment or a contractual relationship with a business entity which is doing business with the officer's public agency.

Sections 112.313(3) and 112.313(7)(a), Florida Statutes, are inapplicable to your situation because there is no indication that the School Board or District schools are purchasing uniforms from your company. You have also represented that the "preferred vendor" designation is an informal, non-contractual, non-exclusive relationship. In CEO 80-35, Question 2, we opined that the Code of Ethics would not be violated where an assistant superintendent and a school principal owned a business selling sporting goods and gym supplies to students or teachers as private individuals, but we warned the requestors, who were both high-ranking employees in the school system, to be extremely careful to avoid both the use of position and the appearance of such use in

connection with sales of athletic supplies to individual customers. In CEO 75-196, where a school board member owned an interest in a trophy shop that sold items to school-related organizations, we warned against the personal solicitation of school advisors and personnel, who may have felt "pressured" to purchase from the school board member because of the power of the school board to hire, terminate, and exert other significant influence over school personnel. See also CEO 75-127, CEO 80-68, CEO 84-50 (Question 2), and CEO 94-16, all of which prohibit the personal solicitation of school district employees by a school board member.

Accordingly, we find that a prohibited conflict of interest would not be created by your employment with a school uniform company that has been designated the "preferred vendor" by many district schools that require uniforms, but if you are elected to the School Board we caution you against personally soliciting school district staff, as well as school-sponsored organizations like uniform committees, parent-teacher organizations, or school advisory committees, to designate your company as the "preferred vendor" for a school's mandatory uniforms.

Your question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 16, 2010 and **RENDERED** this 21st day of April, 2010.

Roy Rogers
Chairman

CEO 97-7 -- March 6, 1997

CONFLICT OF INTEREST

SCHOOL BOARD EMPLOYEE SERVING ON BOARD OF DIRECTORS OF PROPOSED CHARTER SCHOOL

To: Dorothy J. Orr, Ed.D., Executive Assistant to the Superintendent and Board Liaison (Ft. Lauderdale)

SUMMARY:

A prohibited conflict of interest would be created under Section 112.313(3), Florida Statutes, where a school board employee serves on the board of directors of a charter school which is seeking the school board's approval to operate. The employee would be acting in her private capacity as a member of the charter school's board to sell services to her agency, and the interests of her employer may not always be allied with the charter school. Thus, there is no unity of interests present that would justify applying Section 112.316, Florida Statutes, to exempt the conflict. Section 112.313(7)(a) is inapplicable to the situation because, although the school board may both regulate and do business with a charter school, the director would not receive compensation for serving as a director and therefore would have neither an employment nor a contractual relationship with the charter school.

QUESTION:

Would a prohibited conflict of interest be created were a school board employee to serve on the board of a proposed charter school which must be approved by the school board?

Your question is answered in the affirmative.

In your letter of inquiry, we are advised that you are employed by the Broward County School Board as an Executive Assistant to the Superintendent and Board Liaison. From our review of your position description we recognize that this is a high-level position of significant responsibility and that you report directly to the Superintendent. The materials you submitted also reveal that due to your 40 plus years of experience in education as a teacher, principal, and administrator, you have been asked to serve on the board of directors of a proposed charter school which, pursuant to Section 228.056, Florida Statutes (1996 Supp.), has submitted an application to the School Board for approval. You question whether service on the charter school's board while also employed by the School Board creates a conflict of interest prohibited by the Code of Ethics for Public Officers and Employees.

Charter schools are a recent development in Florida's education system. Legislation was enacted in 1996 permitting the formation and operation of charter schools after they have undergone a rigorous application process culminating in a school board's approval and sponsorship. Thereafter, and for the life of the school's charter, there continues to be

substantial interaction between the school board and the charter school, particularly since students enrolled in a charter school are funded the same as students enrolled at other public schools in the school district. In essence, school boards reimburse charter schools for the education they provide to their students.

Two provisions of the Code of Ethics govern your inquiry--Sections 112.313(3) and 112.313(7)(a), Florida Statutes. They state:

> 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. 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 of 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. This subsection shall not affect or be construed to prohibit contracts entered into prior to:
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> (a) October 1, 1975.
> (b) Qualification for elective office.
> (c) Appointment to public office.
> (d) Beginning public employment.
>
> [Section 112.313(3), Florida Statutes (1995).]

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--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 . . .; 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. [Section 112.313(7)(a), Florida Statutes (1995).]

Before addressing Section 112.313(3), let us first state that Section 112.313(7)(a) is inapplicable to your inquiry. Although Section 112.313(7)(a) prohibits a public employee

from having an employment or contractual relationship with a business entity which is doing business with or regulated by her agency, because you would not be compensated for serving on the charter school's board, our opinion precedent concludes that you would not have an employment or contractual relationship with the charter school for purposes of Section 112.313(7)(a). See CEO 94-17 and the opinions referenced therein. Thus, notwithstanding whether the School Board regulates charter schools and does business with them, because it clearly does, Section 112.313(7)(a) would not apply to your situation.

Turning now to Section 112.313(3), the first sentence of this provision would prohibit you, acting in your position with the School Board, from purchasing services from the charter school where you serve as a director of the school. However, inasmuch as your official duties as Executive Assistant and Board Liaison do not formally include any involvement in the Board's decision to approve and sponsor a charter school, we view the first portion of Section 112.313(3) as inapplicable to your situation.

The second sentence within Section 112.313(3) would also prohibit you, acting in your private capacity, from selling services to the School Board. School districts provide the funding for charter schools and, in turn, charter schools educate a segment of the school district's student population. In numerous opinions we have opined that a director of a private corporation acts in a private capacity to sell services to her agency when the corporation takes action. In CEO 94-17, we examined whether this language would prohibit an HRS district administrator from serving on the board of a nonprofit corporation contracting with the district. There, we concluded that a "unity of interests" rather than a conflict existed and that Section 112.316, Florida Statutes, operated to exempt what otherwise would have been a violation of Section 112.313(3). The criteria we have applied in determining whether it is appropriate to make such a finding include: (1) the individual does not stand to benefit privately; (2) the individual is appointed to the organization's board because of her public position; and (3) the organization was created for the benefit of the individual's agency. See also CEO's 87-5, 85-59, and 81-40. However, with the exception of the first element, these criteria are not present in your situation.

Although it may be advantageous for the charter school to have a School Board employee serving on its board, neither the law authorizing charter schools nor the School Board's policy implementing Section 228.056 suggest that the directors of a proposed charter school should be comprised of School Board administrators. Further, although charter schools and traditional schools share the same mission of educating students, charter schools are intended to achieve that objective differently, with fewer constraints, than traditional public schools. Therefore, we do not find there to be a "unity of interests" between your employment with the School Board and your service on the board of directors of a charter school that would justify the application of Section 112.316, Florida Statutes, to exempt you from the prohibition of Section 112.313(3).

Accordingly, we find that a prohibited conflict of interest would be created where you serve on the board of directors of a charter school seeking approval and sponsorship by your employer, the School Board.

ORDERED by the State of Florida Commission on Ethics meeting in public session on March 6, 1997, and **RENDERED** this 12th day of March, 1997.

Mary Alice Phelan
Chair

CEO 14-02 - March 12, 2014

CONFLICT OF INTEREST

CITY COMMISSIONER OR COMMISSIONER'S FIRM CONTRACTING WITH RADIO STATION

To: Jennifer S. Blohm (Tallahassee)

SUMMARY:

Section 112.313(7)(a), Florida Statutes, would prohibit a city commissioner from entering into a contract to provide local radio show hosting services for a radio station from which the city purchases broadcast air time, whether he contracts with the station personally or through his firm. However, the commissioner's firm would not be prohibited from entering into a more general consulting and advertising contract with the same radio station. CEO 12-7, CEO 06-21, CEO 03-13, CEO 88-65, CEO 82-78, and CEO 80-25 are referenced.[1]

QUESTION 1:

Would a prohibited conflict of interest be created if a city commissioner were to be employed by a radio station as host of a local radio talk show, where the city utilities department purchases air time from that station?

Under the circumstances presented, this question is answered in the affirmative.

In your letter of inquiry and information provided to our staff, you relate that this opinion is sought on behalf of a member of the Tallahassee City Commission ("Commissioner").

You state that the Commissioner is considering an offer of a contract with a radio station to host a local radio talk show which would include guest interviews and local news reports, with the likelihood that political and local government topics would be discussed during the show. You explain that in this first scenario, the Commissioner contemplates entering into an individual contract with the station under which it would pay him a salary for hosting the show. You write that an additional contract is also contemplated, under which his advertising and public relations firm (of which he is sole owner) would sell advertising for the radio station, in general and for his show, as well as providing general consulting services to the radio station in the areas of community promotion, marketing, and training. The Commissioner's firm, which is registered as a corporation with the Florida Secretary of State, would be compensated on an hourly basis for such services and would be paid a commission for any advertising time the firm sold on behalf of the station. You further explain that the City Utilities Department currently purchases broadcast air time on the same radio station in order to inform utilities customers about topics including energy conservation and emergency preparedness. You state that the City Commission approves the overall budget for the Utilities Department but does not review or approve the City Utilities Department's purchases of broadcast air time. Individual radio air time purchases for the Utilities Department are, you advise, approved by the City Manager. The applicable provision of the Code of Ethics is Section 112.313(7)(a), Florida Statutes, which states:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.-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, . . . ; 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.

Section 112.313(7)(a) prohibits the Commissioner from having a contractual or employment relationship with a business entity that is doing business with his agency. It also prohibits employment and contractual relationships which create continuing or frequently recurring conflicts of interest, or which impede the full and faithful discharge of public duties.

By virtue of its purchases of broadcast air time from the radio station, the Commissioner's agency (the City) is "doing business with" the station.[2] Consequently, the Commissioner's employment by the station would fall squarely within the statutory prohibition, and as none of the possible exemptions in Section 112.313(12), Florida Statutes (sealed competitive bidding, sole source of supply, etc.) apply here, we find that the Commissioner's employment by the radio station would create a prohibited conflict under the first part of Section 112.313(7)(a), Florida Statutes.

Accordingly, we find a prohibited conflict of interest would be created were the Commissioner to contract with the radio station to provide his services as a talk show host.

This question is answered accordingly.

QUESTION 2:

> Would a prohibited conflict of interest be created if, alternatively, the Commissioner's firm were to contract with the same radio station to provide his hosting services for a local radio talk show, where the city utilities department purchases air time from the station?

Under the circumstances presented, this question is answered in the affirmative.

In Question 1 above, we found that a contract between the radio station and the Commissioner under which the Commissioner would host a radio show would create a prohibited conflict of interest under the first part of Section 112.313(7)(a), because the Commissioner would have an employment or contractual relationship with a company (the radio station) that is doing business with his agency. In your alternative scenario, the Commissioner would instead be an employee of his advertising and public relations firm, of which he is sole owner, and his firm would provide his services to the radio station.

In analyzing whether a public officer or employee has a contractual relationship with a business entity doing business with his agency, we typically observe the separate "personhood" of corporate entities from each other and from their owners. For example, in CEO 82-78 we found a town mayor would have a prohibited conflict of interest if he were employed as a burglar alarm salesman for a company which had been granted a cable television franchise by the town, but would not have a conflict if the owner of the company formed a separate limited partnership for the operation of the cable television system. We reasoned that the separate partnership would be the entity regulated by the town, while the mayor would be employed by the originalâ€"and separate-corporation.

At the same time, we have recognized that the corporate form, while useful and necessary in a variety of contexts, cannot be allowed to "thwart the intent and effectiveness of the Code of Ethics." CEO 80-25. Thus, in CEO 06-21, we found that for purposes of the voting conflicts law, a town councilman's "principal" was the owner of a number of companies which had extensive interests in the town, despite the fact that the council member's paycheck came from one of the companies, rather than from the owner himself. In that opinion, we said:

> For the most part, we have recognized the separation of legal identities of corporations from their officers, owners, or parents. We have specifically rejected this approach, however, where the facts require it. For example, in CEO 03-13, we found a voting conflict of interest would be created were a city council member to vote on measures concerning expansion of a medical center owned by a

> corporation that was owned by another corporation which owned yet another corporation which owned still another corporation which employed the member.

Similarly, in CEO 80-25, we found Section 112.313(7)(a) would be violated were a county commissioner to be a stockholder and officer of a corporation which was merely a holding company for a wholly owned subsidiary which acted as a promoter to book shows into an arena owned and operated by the county. In that opinion, we said:

> . . . [W]e have seen no indication that the corporations involved here have been created in order to cover any fraud or injustice. However, in the context of conflict of interest laws, we also observe that it would appear to be no less of a conflict of interest for a public officer or employee to own an interest in and be an officer of a parent, holding company than for him to own and be an officer of a wholly owned subsidiary. Thus, if we were to observe the strict, legal formalities of the corporate form, a public officer or employee could circumvent the Code of Ethics in order to own a corporation doing business with or subject to the regulation of his agency merely by adding a holding company to insulate him from the Code of Ethics.

In the instant scenario, it is clear that the radio station specifically seeks the services of the Commissioner himself, rather than services of his firm generally, to host the radio show, particularly since the show is to contain political and governmental content inextricably woven into the Commissioner's service on the Tallahassee City Commission. In In re James K. Gordon, 13 FALR 1864, 1891-1893 (Commission on Ethics 1990), aff'd in part and rev'd on other grounds, 609 So. 2d 125 (Fla. 4th DCA 1992), we found that a city commissioner for the City of Coral Springs violated Section 112.313(7)(a) when two franchisees of the City retained him to perform certain public relations services himself, notwithstanding the fact that he was paid for those services through his public relations firm. This was because, although the franchisees paid Gordon's company, the facts made clear that the franchisees were "retaining Respondent to personally perform the services and that Respondent was agreeing to personally perform those services." Id. at 1893.

As in Gordon, under the instant facts the radio station desires the services of the Commissioner himself, and payment to him through his firm, rather than directly by the radio station, does not change the underlying relationship. Therefore, we find a prohibited conflict of interest would be created under the first part of Section 112.313(7)(a) were the Commissioner's firm to contract with the radio station to provide his services as a talk show host.

Accordingly, we find a prohibited conflict of interest would be created were the Commissioner's firm to contract with the radio station to provide his services as a talk show host.

This question is answered accordingly.

QUESTION 3:

> Would a prohibited conflict of interest be created if the Commissioner's firm were to contract with the same radio station to provide consulting services and advertising sales, where the city utilities department purchases air time from the station?

Under the circumstances presented, this question is answered in the negative.

The radio station's potential employment of the Commissioner's firm to provide consulting services and advertising sales to the radio station presents facts that differ from those of Question 2 in an important way: there is no indication that the radio station is specifically seeking the Commissioner's personal services or that he has agreed to personally perform the services they seek. In other words, here the radio station appears to be seeking the services of the firm generally, rather than of the Commissioner himself. Under such a scenario, observance of the corporate form is appropriate, and the contract would not be prohibited under the first part of Section 112.313(7)(a). Nor would this scenario create a conflict under the second part of Section 112.313(7)(a), because

nothing in the facts presented suggests that the firm's work in promotion, marketing, and training for the station will interfere with any responsibility the Commissioner has as a member of the City Commission. However, the Commissioner would be required to comply with the voting conflicts law, Section 112.3143(3)(a), Florida Statutes, as to any measures related to the radio station that may come before the City Commission.

This question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on March 7, 2014, and **RENDERED** 12th day of March, 2014.

Morgan R. Bentley, Chairman

[1] Opinions of the Commission on Ethics may be obtained from its website www.ethics.state.fl.us.

[2] We have consistently found that an entity is "doing business" with an agency for purposes of Section 112.313(7)(a), Florida Statutes, when the parties have entered into a lease, contract, or other type of legal arrangement under which one party would have a cause of action against the other in the event of a default or breach. CEO 12-7; CEO 88-65.