

# FLORIDA SHERIFFS ASSOCIATION



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FSA Headquarters • 2617 Mahan Drive • Tallahassee, Florida



# Webinar/Presentation



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- Please do not put the conference call on hold
- This presentation will be posted to our website this afternoon



# Legislative Affairs at FSA



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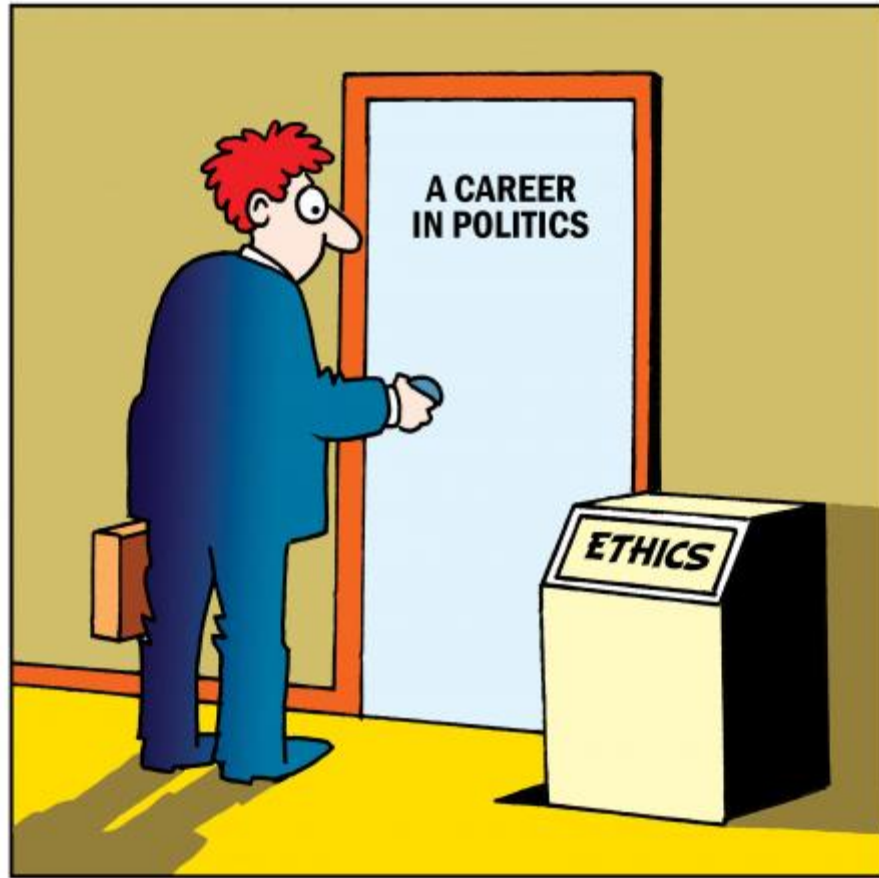
## CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES PART I

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This presentation will be posted at: <http://www.flsheriffs.org/webinars/>





# Rule 34-7.025

## Required training for Constitutional Officers

Fla. Const. Art. II., Sec. 8 – “Ethics in Government”

Ch. 112, Part III, F.S. – “Code of Ethics for Public Officers and Employees”

- Doing business with one’s own agency;
- Conflicting employment or contractual relationships;
- Misuse of position;
- Disclosure or use of certain information;
- Gifts, honoraria and unauthorized compensation;
- Post-officeholding restrictions;
- Restrictions on employing relatives;
- Voting conflicts;
- Financial disclosure requirements, fines and appeals; and
- Ethics Commission procedures.



**Ethics**  
Ethics in business  
moral principles  
rules and regulation  
of right conduct rec  
values that guide t



# Florida Constitution, Article 2 § 8

**Ethics in government.**— A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

- (a) All elected constitutional officers and candidates for such offices and . . . [certain] employees shall file full and public disclosure of their financial interests.
- (b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.
- (c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions.



# Florida Constitution, Article 2 § 8 cont'd

(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 in such manner as may be provided by law.

...

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees . . . .

(g) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.



For the people who brought you watered-down chemotherapy drugs...

# ETHICS®

Do not take **ETHICS®** if you are pregnant, or nursing.  
Do not take **ETHICS®** if you have a conscience, or ever  
plan to develop one.  
Do not take **ETHICS®** if you have ever fallen asleep  
on the job.

Talk to your doctor if using **ETHICS®** causes you sleepless  
nights, makes you feel uncomfortable, especially around  
cancer patients, or gives you a vague feeling that  
you might be doing something wrong.

In controlled studies, there was no difference between patients who took ETHICS and those who took a placebo. However, since most people never read the small print, it really doesn't matter. Kind of like voting for a liberal government versus a Conservative one. It just makes you feel like you're doing something, when in fact you really are not. But we digress.

**Can** CITIZEN  
CaliforniaTimes.com





# Legislative Intent and Declaration of Policy s. 112.311, F.S.

(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* other than the remuneration provided by law. . . .

(2) It is also essential that government attract those citizens best qualified to serve. . . . *Public officials should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests* except when conflicts with the responsibility of such officials to the public cannot be avoided.

(3) . . . .In order to preserve and maintain the integrity of the governmental process, *it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions. . . be regularly disclosed to the people.*



# Legislative Intent and Declaration of Policy s. 112.311, F.S. (cont'd)

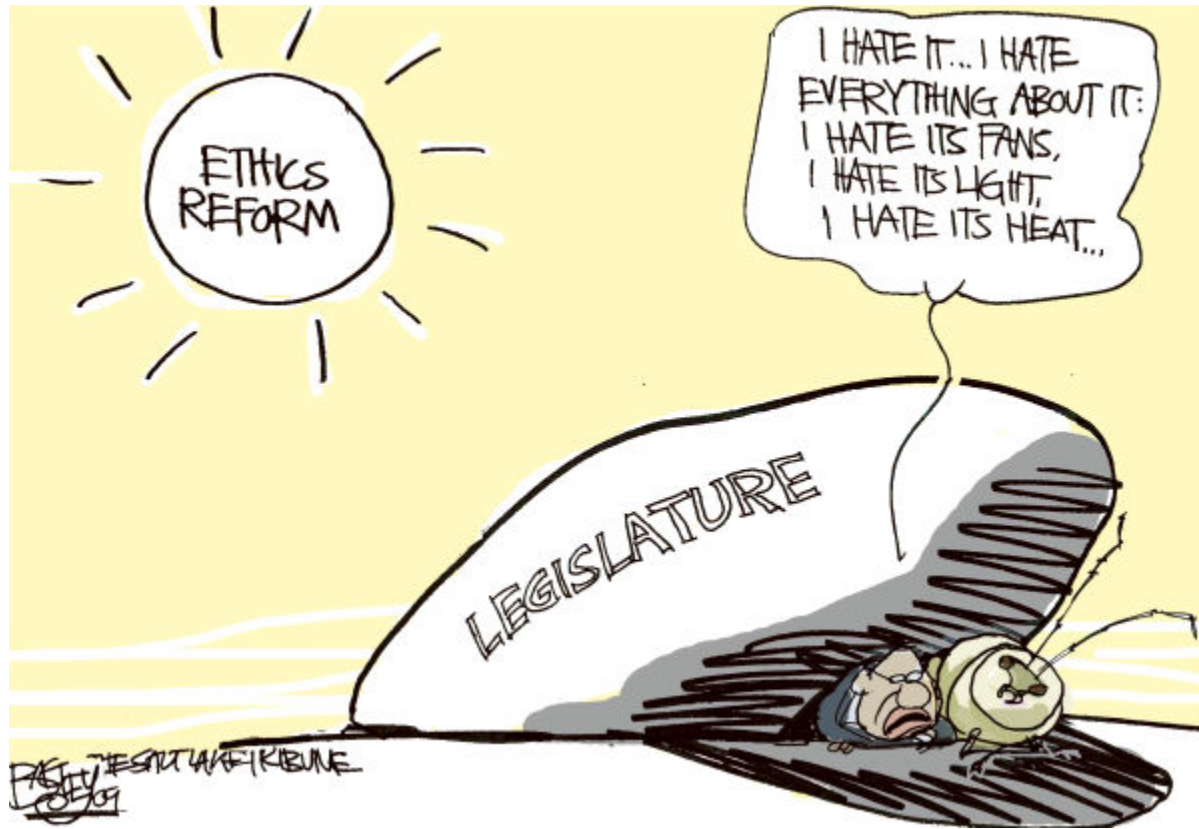
(5) It is hereby declared to be the policy of the state that *no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage 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 or her duties in the public interest.* To implement this policy . . . there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. . . . 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.



# Legislative Intent and Declaration of Policy s. 112.311, F.S. (cont'd)

(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 consistent with this code and the advisory opinions rendered with respect hereto 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





# If You're Done. . .

CEO 15-05 says a Constitutional Officer is **NOT REQUIRED** to complete ethics training in the calendar year in which the officer leaves public office.

So any Sheriffs not re-elected this year, get a pass in 2017



# The “cheat sheet” on ethics policy

- Don't use your office for private gain.
- The people have a right to lobby their elected representatives; the people also have a right to know who is doing so and what money and activities they are using to do so.
- Don't engage in business that conflicts with your public duties.
- You are agents and representatives of the people – act accordingly.



# *Ask yourself . . .*

- Would you open an IA on one of your people for this course of action?
- Would you investigate a member of the public for it?
- If this was printed on the front page of the newspaper, would it be embarrassing? Could you explain it without talking with your lawyer first?
- Can you tell your mom about it?

**If the answer is “YES” – don’t do it!**



# Doing Business with One's Own Agency

## s. 112.313(3), F.S.

Neither public officer nor purchasing agent may directly or indirectly purchase, rent, or lease any realty, goods, or services for agency from any business entity of which the public officer or employee (or spouse/child) is partner, director, or proprietor with has a material interest;

Nor shall a public officer or employee when acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency.

- (CEO 85-48 prohibits any employee from selling to agency, even part-time, uncompensated deputy – sealed competitive bid process ok – but does not appear to apply to civilian volunteer or “special” deputies.)





# Examples / Questions:

- Cannot buy office products from spouse's office supply store.
- Cannot sell used vehicles to son's used car lot.
- But, can you buy those office supplies from an office supply store owned by your sister-in-law?
- Can you sell agency's used cars to nephew's car lot?



# Conflicting Employment or Contractual Relationship s. 112.313(7), F.S.

- (a) No public officer or employee of an agency shall [employ or contract] 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.



# CEO 79-57

Public officer can maintain a real estate license and receive commissions on sales. Caution however:

- Could not of course sell to own office.
- Listing/selling real estate of employees would be a conflict of interest.
- Could be viewed as misuse of public position for personal gain s. 112.313(6), F.S.



# CEO 13-13

No prohibited conflict of interest would be created under Sections 112.313(3) and 113.313(7)(a), Florida Statutes, were an airport authority commissioner who privately contracted to purchase a parcel of property located near the airport to donate his right to purchase the parcel to the airport authority. The commissioner would not be selling real property to his agency-he would be donating the right to purchase the property to the airport authority (and the Commissioner's purchase deposit would be returned to him. His transfer of the right to purchase the property also would not create a prohibited contractual relationship.



# CEO 14-24

- County administrator wants deputy county administrator in the DROP to leave prior to her scheduled termination date
- Employee stated that she would accelerate her termination only if she could receive a severance package that would provide the same contribution to her FRS trust account as if she had stayed in DROP for the entire five years: a figure equivalent to about eighty-three weeks' of annual salary.
- In light of the caps (twenty weeks' worth in some circumstances, six weeks' worth in others) under Section 215.425, Florida Statutes, on the amount of severance pay that can be paid by a government entity, it is impossible for the County to offer the employee a severance package with the compensation she desires, based solely on severance pay.
- But employee's longevity as a County employee, her status as a senior employee, and her institutional memory have great value to the County, and suggest that a post-public-employment consulting agreement may be a way for the County to compensate the employee for the money that otherwise would have been placed in her DROP account, without violating the caps of Section 215.425. The agreement would be negotiated and executed while the employee is a County employee and would require approval of the Board of County Commissioners; however, the employee would not begin her consulting work until after she leaves County employment.



# CEO 14-24 cont'd

- Would a prohibited conflict of interest be created were a county employee to enter into an agreement with the county which sets out the terms and conditions by which the employee will serve as an independent contractor consultant for the county after the employee's retirement from county employment?
- Under the particular circumstances presented, a prohibited conflict of interest would not be created under Section 112.313(3) or Section 112.313(7)(a), Florida Statutes, were a county employee to enter into a post-public-employment consulting agreement with the county.



# CEO 16-08

- Would a prohibited conflict of interest be created if a County Commissioner were to be employed by a business that sells vehicle parts to the County?
- Yes . . . But note the “small county” exemption under 112.313(12)(e) where there is no violation when the business is the only source of supply within the political subdivision of the officer or employee and there is full disclosure by the officer or employee of his or her interest in the business entity to the governing body of the political subdivision prior to the purchase, rental, sale, leasing, or other business being transacted.



# CEO 13-16

- Municipal police officer wants to open a private investigation firm which will target unfaithful spouses and employees stealing from employers.
- Would this present a prohibited conflicting employment or contractual relationship under s.112.313(7)(a)?





# CEO 13-16 cont'd

- YES – while not a prohibited contractual relationship with his employer b/c he is not doing business with city, a continuing and frequent conflict of interest would arise from the surveillance work
- *“an officer “tempts dishonor” when his private, secondary employment could influence activities that he may be called upon to perform in his public capacity.”*
- Must consider: (1) whether the officer by virtue of his public position has access to confidential information which could provide a benefit to his private employer; and (2) whether the nature and subject matter of the secondary employment could influence the officer's performance of his public duties



# CEO 15-06

- A city police officer owns a receivership company wants to contract with the city to be appointed receiver of residential properties for which the city is a code enforcement lienor?
- A prohibited conflict of interest would not be created under s. 112.313(3), doing business with one's own agency, because the officer would not be selling services to his political subdivision. There is no sale of services; though the receivership company provides a service to the City, the City pays no money for it. The money the receivership company accepts comes from the new tenants occupying the property in receivership.



# CEO 15-06 cont'd

- But, a prohibited conflict of interest would be created under s. 112.313(7)(a), conflicting employment or contractual relationships, because the police officer's private interests would conflict with his public code enforcement responsibilities. In this case, since some code enforcement actions will ultimately result in unpaid liens, if the officer's company is contracting to serve as receiver, his private interest would be to execute the strictest code enforcement possible. At the same time, his public duty calls for him to be objective with respect to code enforcement



# Misuse of Public Positions

## s. 112.313(6), F.S.

No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position ... to secure a special privilege, benefit, or exemption for himself, herself, or others.



# Misuse of Public Positions s. 112.313(6), F.S.



What does that mean?

5th DCA has suggested that the Commission on Ethics must find the following by **clear and convincing evidence**:

1. Used or attempted to use his official position;
2. To secure a special privilege, benefit or exemption for himself or another; and
3. Acted “corruptly” in doing so, that is, **with wrongful intent and for the purpose of benefiting himself or another person from some act or omission**, which is inconsistent with the proper performance of his public duties.



# CEO 13-25

- Letters of support on official letterhead for city grant application, certificate of need for hospice organization, etc. not a misuse of public position where there *“is no suggestion of any quid pro quo in exchange for the letters of support, there is no indication of any benefit to you other than the incidental political benefit of the goodwill of the constituent, and there appears to be no law, rule, or policy which prohibits such use of resources”*



## **McAlpin v. Criminal Justice Standards and Training Com'n, App. 1 Dist., 155 So.3d 416 (2014).**

Sufficient evidence in disciplinary proceeding against police chief supported charge of misuse of official position where chief attempted to thwart a potential criminal prosecution of a friend and fellow city employee who had been accused of sexual assault by his stepdaughter; chief took charge of the criminal investigation, but then failed to interview witnesses, failed to collect physical evidence, ignored information about the possibility of other victims, failed to follow-up with medical personnel, inappropriately berated alleged victim while interviewing her as if she were a suspect, and opined to assistant state attorney that there was insufficient evidence to charge friend.



# Political note of caution

Caution is advised with the use/aid of employees in public officers' elections/campaign efforts. Incidental benefit to a campaign may be acceptable, but be careful.







***" I know the difference between right and wrong, but it  
hasn't held me back. "***



If all else fails, remember this maxim:

**Just because you CAN, doesn't mean you SHOULD.**





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**Questions?**



# Completed Part I



*Protecting, Leading, Uniting Since 1893*

Our next ethics webinar  
Code of Ethics Part II  
will be held Thursday November 10 at 10 AM EST

