

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

RELATIONSHIP WITH NOT-FOR-PROFIT:

The Pensacola Sports Association, Inc. (PSA), a local not-for-profit, obtains funding from Visit Pensacola, the County's designated tourism promotion agency, which obtains millions of dollars annually in funding from the County's Tourist Development Tax. (ROI 48, 50) Visit Pensacola is obligated to pass on some of the funding it receives to both the PSA and Art Culture and Entertainment, Inc. (ACE), another not-for-profit company. (ROI 48, 50) The PSA does not

have a contract or agreement with the County for funding but representatives from both the PSA and ACE have joined with representatives from Visit Pensacola to come before the Board of County Commissioners to make requests of the County for funding through Visit Pensacola. (ROI 50, 53)

PSA's Director Ray Palmer does not believe he is a lobbyist, although he appears before the Board of County Commissioners annually along with representatives of Visit Pensacola and ACE, to present the budget request and answer questions about the budget request. (ROI 53) A review of the minutes of the County Commission meetings reflects that between April 2017 through September 2018, no one from any of the aforementioned entities came before the County Commission relative to the unified budget. (ROI 53, Note)

For years, the PSA has held a jet ski tournament known as the Emerald Coast Grand Prix. (ROI 48, 55) The April 2018 event was hosted by Reflections Advertising with grant funding from the County's tourist tax. (ROI 54, 55) Organizations, such as Reflections Advertising, apply for grants through the PSA, which in turn, obtain the County's tourist tax funding from Visit Pensacola to host sporting events in the County. (ROI 54) The County Commission indirectly approves the PSA's budget annually through Visit Pensacola but is not involved in deciding what events are funded. (ROI 54)

In 2018, the upcoming Emerald Coast Grand Prix was in "crisis mode" because Reflections Advertising was not able to timely obtain the buoys, which were necessary for the event. (ROI 55) The owner of Reflections Advertising had a friend in Ontario, Canada, who agreed to loan buoys for the event for free, yet, expedited shipping would have been too expensive, and the buoys may not have been delivered in time for the event. (ROI 55) Respondent learned of the problem from

the PSA Director and offered to make the trip to Canada, along with his son¹⁵ and his administrative assistant to take delivery of the buoys. (ROI 54, 55) Either before or after the trip, Respondent was told that expenses could be reimbursed under the grant that Reflections Advertising received through the PSA. (ROI 51)

Following the April trip, Respondent submitted his expense receipts to Reflections Advertising, who then submitted them to the PSA for reimbursement. (ROI 56, Exhibit G) A Letter of Agreement, dated April 13-15, 2018, but written in September 2018, was requested by staff of Visit Pensacola to document the reason for the reimbursements to Respondent. (ROI 51, Exhibit G)

Respondent was reimbursed \$1,106.90 for round-trip mileage, calculated at 54.5 cents per mile using Google Maps, and \$1,039.52 for the cost of shipping the equipment used in the competition back to Canada, for a total of \$2,146.42. (ROI 49, 51, Exhibit G) This amount included materials Respondent bought to build a crate to return the buoys to the owner in Ontario. (ROI 56, Exhibit G) The amount did not include Respondent's, his son's, or his assistant's time or meals. (ROI 55, 56, Exhibit G) Only actual expenses were reimbursed. (ROI 56)

Respondent was not working on County time during the trip and no County equipment was used. (ROI 56) He maintains that he acted in his private capacity and did not use his public position to get reimbursed. (ROI 56)

It is the state's policy that no public officer or employee should have a direct or indirect interest or engage in any professional activity that is in substantial conflict with the proper discharge of the officer's or employee's public duties. Toward that end, Section 112.313(7)(a) was enacted with the intent to prevent situations in which private considerations may override the

¹⁵ One of Respondent's sons competes nationally in jet ski races and both his sons planned to race in the Emerald Coast Grand Prix. (ROI 55)

faithful discharge of public responsibilities. *Zerweck v. State Commission on Ethics*, 409 So. 2d 57 (Fla. 4th DCA 1982).

Absent the applicability of an exemption under Section 112.313(12) or Section 112.313(15), Florida Statutes, or the application of Section 112.316, Florida Statutes, the facts are analyzed under two parts or clauses of Section 112.313(7)(a). The first part would prohibit Respondent from having a contractual relationship with a business entity, defined in Section 112.312(5),¹⁶ regulated by or doing business with the County Commission. The second part of Section 112.313(7)(a) also prohibits Respondent from having a contractual relationship that creates continuing or frequently recurring conflicts between his private interests and his public duties or creates impediments to the full and faithful discharge of his public duties. Both prohibitions are predicated on the existence of a contractual relationship. The Commission on Ethics has previously held that reimbursement of expenses does not constitute the "compensation" that would indicate a contractual relationship. See CEO 00-23, fn. 2. As Respondent has no contractual relationship, he has no conflict under Section 112.313(7)(a).

To go a step further in the analysis, because the PSA is not regulated by or doing business with the County Commission, the first part of Section 112.313(7)(a) does not apply. The PSA receives funds from Visit Pensacola. In turn, Visit Pensacola receives Tourist Development Tax funds from Respondent's agency, the County Commission. The intermediary between the PSA and the County is Visit Pensacola, which removes the PSA from the County Commission's regulation or business relationship.

¹⁶ Section 112.312(5) "Business entity" means any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

For the second part of this analysis, Respondent's employment or contractual relationship with the PSA must create a continuing or frequently recurring conflict between Respondent's "work" with the PSA and his public duties as a County Commissioner or impede his public duties. A one-time trip to help a local not-for-profit hold an event that otherwise might not have taken place is not likely to impede Respondent's public duties. Clearly, where Respondent has no public duties or responsibilities in relation to the PSA, he could not be tempted to compromise his public duty performance for the benefit of the PSA. It certainly did not create a continuing or frequently recurring conflict.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes.

ALLEGATION ELEVEN

Respondent is alleged to have violated Section 112.3148(3), Florida Statutes, by soliciting reimbursement for travel expenses and the cost of shipping certain equipment from Pensacola Sports Association, Inc., a private not-for-profit organization that accepted funding from the County.

APPLICABLE LAW

Section 112.3148(3), Florida Statutes, is set forth above under Allegation Four.

ANALYSIS

The facts are set forth above under Allegation Ten. It is alleged that Respondent solicited reimbursement for travel expenses and the cost of shipping certain equipment from the PSA. Respondent may not solicit anything of value for himself or others, including travel from a prohibited donor. The PSA's Director Palmer advised that Respondent did not approach the

Association inquiring about reimbursement. (ROI 51) Palmer stated that PSA employee, Sally Garst, suggested to him (Palmer) that the services Respondent provided in taking delivery of the equipment were subject to reimbursement. (ROI 51) Garst has retired from the PSA and the Commission's Investigator was unsuccessful in his efforts to contact her for comment. (ROI 51) There is no evidence to support the allegation that Respondent solicited reimbursement of expenses and costs from the PSA, rather than being offered reimbursement. No further analysis is warranted since element two cannot be proven.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes.

ALLEGATION TWELVE

Respondent is alleged to have violated Section 112.3148(4), Florida Statutes, by accepting reimbursement for travel expenses and the cost of shipping certain equipment from Pensacola Sports Association, Inc., a private not-for-profit organization that accepted funding from the County.

APPLICABLE LAW

Section 112.3148(4), Florida Statutes, is set forth under Allegation Five.

ANALYSIS

The facts describing the entity known as the PSA are set forth above under Allegation Ten. As stated previously, the official records/minutes of the County Commission meetings do not reflect that PSA's Director Ray Palmer or anyone from the PSA appeared before the County Commission in the preceding 12 months to lobby, despite the fact Palmer advised he appears before the County Commission annually to present the budget request. (ROI 53) Assuming the

County's official records are accurate and harboring reasonable doubt whether or not Director Palmer is a lobbyist during the relevant time period, there is insufficient evidence of a violation.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes.

ALLEGATION THIRTEEN

Respondent is alleged to have violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, "Quarterly Gift Disclosure" disclosing reimbursed travel expenses and shipping costs exceeding \$100.

APPLICABLE LAW

Section 112.3148(8), Florida Statutes, is set forth under Allegation Six.

ANALYSIS

The facts are set forth above under Allegation Ten. This allegation refers to the \$2,146.42 reimbursed to Respondent by the PSA for his help in the delivery of buoys for the Emerald Coast Grand Prix competition. The gift disclosure requirement under Section 112.3148(8), Florida Statutes, is triggered only if a gift has a value in excess of \$100.

With respect to travel, the first determination is whether the travel constitutes a "gift," as that term is used in the law. The term "gift" is defined to mean "that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given" §112.312(12)(a), Fla. Stat. The term is defined specifically to include transportation. §112.312(12)(a)7., Fla. Stat. "Gift" also specifically excludes salary, benefits, services, fees, commissions, or expenses associated with the recipient's employment.

§112.312(12)(b)1., Fla. Stat. It was resolved under Allegation Ten that Respondent did not have an employment relationship with the PSA.

The second determination relates to who (or what entity) paid the expenses of the travel, transportation, and other costs. This is significant because if the money was paid by a vendor, or lobbyist of Respondent's agency, or principal of a lobbyist, Respondent would be prohibited from knowingly accepting, directly or indirectly, a gift worth over \$100 from any of these persons or entities. The PSA reimbursed Respondent and the PSA is not a prohibited donor.

Since the expenses and costs were incurred not in connection or association with Respondent's employment, then the monetary reimbursement was a gift. However, a violation of section 112.3148 may be avoided by timely giving "consideration of equal or greater value" within 90 days. §112.312(12), Fla. Stat. Respondent's time and cost to operate the vehicle (i.e., insurance, fuel, wear-and-tear, etc.) is the requisite "consideration." Consideration generally means that something is given in exchange. 17A Am.Jur.2d Contracts §§113 and 114. It means "some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or consideration by the other, as an act of forbearance or the creation, modification, or destruction of a legal relation; or a return promise bargained for and given in exchange for the promise." 17 Am.Jur. 2d Contracts §85.

Here, there appears to be sufficient consideration, or sufficient value, to support a finding that Respondent gave "consideration of equal or greater value" for the gift. However, the transaction was not within 90 days. Respondent traveled to Canada around April 13-15, 2018. (ROI 48, Exhibit G) The PSA reimbursed Respondent on August 9, 2018, which is around 118 days¹⁷ – well outside the 90 day "grace period." (ROI 49) In the usual scenario, the gift would be

¹⁷ The days may slightly vary depending on the dates used.

given prior to the consideration received. In this matter, Respondent gave consideration and the reimbursement (gift) was provided thereafter. The sequence is not significant. Whether or not the intent of the law was effectuated is the significance. One purpose of the law is to provide notice to the general public regarding gifts given to public officials and by whom. Rule 34-13.100, F.A.C. The public interest was not served.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

1. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by publicly sharing and/or publishing confidential transcripts, including the minutes, of meetings of the Escambia County Board of County Commissioners.
2. There is probable cause to believe that Respondent violated Section 112.313(8), Florida Statutes, by disclosing or using information not available to members of the general public (i.e., shade meeting transcripts, including the minutes) and gained by reason of his official position for his personal gain or benefit or the personal gain or benefit of another person or business entity.
3. There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by publicizing his legal defense fund on a social media page affiliated with the County.
4. There is probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes, by soliciting a donation(s) from Fred Hemmer, a vendor doing business with Respondent's agency, or a lobbyist who lobbies Respondent's agency, or the principal of such lobbyist.
5. There is probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes, by knowingly accepting a contribution(s) exceeding \$100 to a legal defense fund from vendor(s) doing business with Respondent's agency, or lobbyist(s) who lobby Respondent's agency, or principal(s) of such lobbyist(s).
6. There is probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, "Quarterly Gift Disclosure" disclosing contribution(s) exceeding \$100 to a personal legal defense fund.

7. There is no probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes, by soliciting free personal legal services from the Clark Partington law firm, a vendor doing business with Respondent's agency, or a lobbyist who lobbies Respondent's agency, or the principal of such lobbyist.

8. There is no probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes, by knowingly accepting free personal legal services valued at over \$100 from the Clark Partington law firm, a vendor doing business with Respondent's agency, or a lobbyist who lobbies Respondent's agency, or the principal of such lobbyist.

9. There is probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, "Quarterly Gift Disclosure" disclosing free personal legal services exceeding \$100 from the Clark Partington law firm.

10. There is no probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes, by having a conflicting employment or contractual relationship with an entity which is subject to the regulation of, or doing business with, the entity in which Respondent is a public officer.

11. There is no probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes, by soliciting reimbursement for travel expenses and the cost of shipping certain equipment from Pensacola Sports Association, Inc., a private not-for-profit organization that accepted funding from the County.

12. There is no probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes, by knowingly accepting reimbursement for travel expenses and the cost of shipping certain equipment from Pensacola Sports Association, Inc., a private not-for-profit organization that accepted funding from the County.

13. There is probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, "Quarterly Gift Disclosure" disclosing reimbursed travel expenses and shipping costs exceeding \$100.

Respectfully submitted this 22nd day of June, 2021.

Melody Hadley FOR
ELIZABETH A. MILLER

Advocate for the Florida Commission
on Ethics

Florida Bar No. 578411
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
(850) 414-3300, Ext. 3702

CEO 91-37 -- July 19, 1991

CONFLICT OF INTEREST; GIFTS ACCEPTANCE

**CITY COUNCILMAN SOLICITING CONTRIBUTIONS
TO PAY FOR NEWSLETTER MAILED TO CONSTITUENTS**

To: Douglas P. Johnson, Councilman, City of Oakland Park

SUMMARY:

A city commissioner may solicit funds to pay for mailing newsletters to his constituents, where the newsletters contain information relating to city issues and include a disclaimer that the opinions contained in the newsletter are those of the city councilman, and that no public funds were used to pay for the newsletter. CEO's 83-15 and 84-116 are referenced. As contributions to pay for the newsletter constitute gifts for purposes of Section 112.3148, Florida Statutes, as amended by Chapter 90-502, Laws of Florida, the councilman would be prohibited from soliciting gifts from political committees and lobbyists who lobby the city, and would be prohibited from accepting gifts with a value in excess of \$100 from political committees and lobbyists. Gifts obtained by the councilman could be used to compensate the political committee which proposes to do the mailing directly, but in no case could the committee contribute more than \$100 towards the cost of the newsletter. Gifts exceeding \$100 would have to be reported by the councilman quarterly on CE Form 9.

QUESTION:

Would a prohibited conflict of interest be created were you, a City Councilman, to mail informational newsletters to constituents, where the cost of mailing is paid for by a private organization?

Your question is answered in the negative, subject to the conditions noted below.

In your letter of inquiry and in subsequent information provided to our staff, we are advised that you would like to send between one and twelve letters per year to your constituents, advising them of your opinion on various issues facing the City. You indicate that these letters would be informative, and would be analogous to a "state of the city" address. We are further advised that the cost of each mailing is anticipated to be approximately \$2,500. To defray this expense, you question whether you would be prohibited from soliciting or accepting financial contributions from individuals and organizations, or whether a private organization which is also registered as a political action committee could be permitted to solicit contributions to pay for the expenses associated with mailing the newsletters. Finally, we are advised that the newsletter would be published on either official-looking City stationery which you have paid for yourself, or upon your business letterhead which denotes that you are an attorney engaged in the practice of law. You also indicate that you would place

a disclaimer upon the newsletter indicating that the opinions reflected in the newsletter belong to you, and do not reflect City policy.

With regard to the stationery on which the newsletter is printed, you have indicated that you will not use the City's stationery, but will use stationery that contains the City logo and looks official. In order to avoid any suggestion that you are using your position in violation of Section 112.313(6), Florida Statutes, we advise that you include a disclaimer indicating that no public funds were used to pay the costs of the newsletter. You had also indicated that the stationery may reflect your status as an attorney engaged in private practice.

We suggest you contact the Florida Bar for their opinion as to the appropriateness of using your business letterhead for this purpose.

Concerning the costs associated with mailing the newsletter, a factually similar situation was involved in CEO 83-15, where a state representative inquired whether she could solicit or accept financial gifts to herself personally or to her office account in order to pay for printing and mailing several informational mailings to her constituents, as long as she disclosed these gifts on her annual financial disclosure report. There, we cautioned the representative that she should be mindful of the provisions contained in Section 112.313(2), Florida Statutes, involving soliciting or accepting gifts, and Section 112.313(4), Florida Statutes, involving unauthorized compensation, before soliciting or accepting any financial gifts. We also advised that she should comply with the gifts disclosure provision contained in Section 111.011, Florida Statutes, which at that time required the disclosure of gifts valued at \$25 or more. See also CEO 84-116, where we opined that no prohibited conflict of interest would be created were a city commissioner to solicit funds for the defense of a lawsuit brought against him in his official capacity.

But for significant changes to the gifts laws enacted since the issuance of CEO 83-15, the rationale of that opinion would be equally applicable to you. However, since the Legislature significantly amended the gift provisions in 1990 through the enactment of Chapter 90-502, Laws of Florida, we must consider your situation in light of these provisions.

Section 112.312(9), Florida Statutes, as amended Chapter 90-502, Laws of Florida, defines a gift as follows:

"Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given, including: . . .

14. Any other similar service or thing having an attributable value not already provided for in this section.

"Gift" does not include: . . .

2. Contributions or expenditures reported pursuant to chapter 106, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.

As you have not indicated that the prospective contributions for the newsletter are related to a political campaign, we will assume for purposes of this opinion that they are not. Although the definition of gift does not explicitly include cash, we are of the view that the contributions

you hope to receive would be considered gifts, whether they are given to you directly or to the political committee on your behalf.

The next issue we will consider is whether you may accept these gifts, and what, if any, reporting requirements are applicable. As an elected municipal officer, you are required to file annually a statement of financial interests (Form 1), pursuant to Section 112.3145(1)(a)1, Florida Statutes. You are therefore considered to be a "reporting individual" pursuant to Section 112.3148(2)(d), Florida Statutes.

Section 112.3148(3), Florida Statutes, provides:

A reporting individual or procurement employee is prohibited from soliciting any gift, food, or beverage from a political committee or committee of continuous existence, as defined in s. 106.011, or from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift, food, or beverage is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

This provision would prohibit you from soliciting any gift from a political committee as defined in Section 106.011, Florida Statutes, or from a lobbyist who lobbies the City, where the gift is for your personal benefit. In your letter of inquiry you advised that the cost of the proposed newsletter may be paid for by a private organization. If the private organization is a political committee as that term is defined under the campaign financing laws of Chapter 106, Florida Statutes, then you would be prohibited from soliciting contributions from the subject organization. Although the proposed newsletter would inform your constituents of your position on City-related issues, we find that you would be the primary beneficiary of the proposed mailing, as it would serve as a means to enhance your name recognition and benefit you politically. Therefore, we are of the view that you should refrain from soliciting any contributions to defray the cost of your newsletter from a political committee or lobbyist pursuant to Section 112.3148(3). This provision does not prohibit you from soliciting contributions from entities who are neither political committees or lobbyists, but we suggest you keep in mind the cautionary language contained in CEO 83-15, if you solicit gifts from these persons.

Section 112.3148(4), Florida Statutes, provides:

A reporting individual or procurement employee or any other person on his behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable

organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

This provision would prohibit you from accepting a gift in excess of \$100 from a political committee, as well as from lobbyists who lobby the City of Oakland Park. As you have indicated that the cost of each mailing each newsletter to your constituents would be approximately \$2,500, and may be provided directly by the organization, we find that you would not be able to accept such a gift if the organization is a political committee and pays the entire cost of each mailing.

If you obtain contributions from persons who are neither political committees or lobbyists, you could use those contributions to compensate the committee for the cost of the newsletter pursuant to Section 112.3148(7)(b), Florida Statutes, but in no case could the committee's contribution to the cost of the newsletter exceed \$100.

As for reporting any gifts you receive, Section 112.3148(8), Florida Statutes, requires you to file quarterly a statement disclosing each gift you received in the previous calendar quarter where the value of the gift exceeds \$100. We have promulgated CE Form 9 to be used for this purpose.

Your question is answered accordingly.

CEO 00-23 -- November 21, 2000

CONFLICT OF INTEREST
FIRE DISTRICT COMMISSIONER SERVING
AS DISTRICT FIREFIGHTER

To: Mr. Richard Wride, Commissioner, North Bay Fire District (Niceville)

SUMMARY:

A commissioner of a fire district who serves for compensation (however small in amount) as a "volunteer" firefighter of the district's fire department does so in violation of Sections 112.313(10) and 112.313(7)(a), Florida Statutes, which prohibit, respectively, an employee of a political subdivision holding office as a member of its governing board, and the member holding employment with an agency which is subject to the regulation of his agency. However, were the district to eliminate the \$2 per run payment or substitute a true reimbursement procedure, or if the member were to refuse in writing in advance the payments, the resulting situation would not be conflicting under either of the statutes, inasmuch as the element of "employment" would fail for want of "compensation," notwithstanding the provision of workers' compensation coverage, life insurance, uniforms and bunker gear (firefighting equipment) to the firefighters (including the member). CEO's 93-23, 89-56, 80-29, 78-28, 76-187, and 76-109 are referenced.

QUESTION:

Is a situation in which a member of the governing commission of a fire district also is a firefighter of the district's fire department violative of Sections 112.313(10) and 112.313(7)(a), Florida Statutes?

Your question is answered as set forth below.

By your letter of inquiry and a copy of a letter from our staff to you, we are advised that you serve as a Commissioner of the North Bay Fire District^[1] and that you serve as a firefighter in the District's fire department. District firefighters, you advise, are provided with workers' compensation coverage, life insurance, and firefighting equipment (e.g., uniforms and bunker gear), and are paid the sum of \$2 per fire call or run. Against this factual backdrop, you question whether there is a conflict, and question further that if there is a conflict whether your refusal to accept the per-run money payments will negate the conflict.

The statutes provide:

EMPLOYEES HOLDING OFFICE.--

(a) No employee of a state agency or of a county, municipality, special taxing district, or other political