

a controlling interest in a business entity that is subject to the regulation of or has substantial business commitments from a state or local governmental agency. As your fire equipment business appears to have substantial business commitments with several public agencies in the area, you should file with the circuit court clerk of the county a sworn statement disclosing such interest.

073-121—April 16, 1973

CONFLICT OF INTEREST

PURCHASED BY PORT AUTHORITY OF MATERIALS FROM CORPORATION OF WHICH AUTHORITY MEMBER IS BRANCH MANAGER

To: Public Officer

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. May a port authority, through its managing director, purchase office supplies and equipment from a national manufacturing company when a member of the authority is the local branch manager of the office products division of the manufacturer?
2. May the authority sell land to a corporation, or construct site preparation improvements on the property at the corporate purchaser's direction and expense, when the local branch of the national manufacturer referred to above has in the past and may in the future transact a substantial amount of business with the corporation?
3. If these transactions are valid, should the interested member declare a possible conflict of interest under §286.012, F. S., and abstain from voting?

SUMMARY:

The managing director of a port authority may purchase supplies and equipment from a company whose local branch office is managed by a member of the port authority without violating §112.314(1), §112.314(2), or §§839.08-839.10, F. S. Nor would such statutes be violated by a sale of land by the authority to another corporation which has in the past and may in the future transact substantial business with the branch office managed by the authority member. If the consummation of the transaction with the corporation is done in the expectation that the probable consequence thereof would be a substantial increase in the business of the corporation with the local branch office managed by the authority member, such member could validly abstain from voting upon the transaction under §286.012, F. S., and should abstain as a matter of public policy. However, if the possibility of increased business with or purchases from the branch office is merely remote and speculative, the authority member should not abstain from voting upon the transaction.

AS TO QUESTION 1:

It appears that the authority member is the manager of the local branch of the office products division of a national manufacturing company. The authority has delegated to its managing director the authority to approve capital and operating expenditures for and to procure office equipment and supplies of less than one thousand five hundred dollars. Competitive bidding contracts covering the

purchase and sale of various products entered into by the city and the State of Florida require the successful bidder to make such products available to the authority on the terms and conditions contained in such contracts. The national manufacturer has in the past and may in the future be the successful bidder for the sale of office equipment and supplies to the city and the state; and the managing director might wish to purchase office equipment or supplies from the local branch office of which a member of the authority is the branch manager upon the terms and conditions stated in the city's (or state's) contract with the manufacturer.

The applicable section of the Standards of Conduct Law is §112.314(1), F. S., which provides that no public officer or employee "shall transact any business in his official capacity with any business entity of which he is . . . an agent" As noted in AGO 071-281, this statute has been uniformly interpreted as prohibiting a public body from engaging in a business transaction with a business entity in which any one of its members has an interest. The purchase of supplies and equipment is, of course, a business transaction within the purview of this law. Here, however, as I read your letter, it is the managing director of the authority, and not the members of the authority, who will actually enter into the business transaction in question if the purchase is less than one thousand five hundred dollars.

The purpose of the Standards of Conduct Law, §§112.311-112.318, F. S., is to avoid any substantial conflict between the private interests and the public duties of a public officer or employee. In the situation here present, there appears to be no possibility of conflict, as the selection of the national manufacturer in question as the supplier of the office equipment and supplies would already have been made by the state or the city, under competitive bidding procedures; and the managing director of the authority would merely take advantage of the favorable terms which the state or the city had been able to agree upon with the national manufacturer. This is not to say that there could never be a violation of §112.314(1), *supra*, where a public body, acting through an employee, purchased supplies or engaged in another type of business transaction with a business entity in which one of its members had a substantial interest; however, in the circumstances here present, it does not appear that the transaction in question would violate the law. For the same reason, there would be no violation of §839.08 or §839.09, F. S.

Accordingly, your first question is answered in the affirmative.

AS TO QUESTION 2:

You state that the authority and a corporation are negotiating for the purchase and sale of property owned by the authority and that among the terms and conditions of the sales contract is an agreement by the authority to construct "site preparation improvements" to be made at the corporation's direction and expense prior to the closing of the sale. The corporation has in the past done substantial business with the local branch of the office products division of the national manufacturer referred to above; and it is possible that it will do so in the future. The branch manager authority member "does not derive any direct personal pecuniary benefit from such business, but does derive the intangible benefits which flow from the increased business success of the branch office for which he is responsible."

It seems clear that any "intangible" benefit to the authority member from the sales that the local branch office of which he is the manager will make to a corporation with which the authority is proposing to do business is so remote and insubstantial as not to prohibit the authority from entering into the transaction. Nor does it appear that the "site preparation improvements" would necessarily include the purchase of office supplies and equipment from the national manufacturer whose local office is managed by a member of the authority, even if it be assumed *arguendo* that the use of the products of that manufacturer in constructing the

"improvements" at the corporation's direction and expense would be a prohibited "business transaction" within the purview of §112.314(1), *supra*.

Section 112.314(2), *id.*, prohibiting a public officer or employee from having "personal investments in any enterprise which will create a substantial conflict between his private interests and the public interest," is not relevant to the question of whether the authority may enter into the sales agreement with a corporation in which no member of the authority has an interest, nor are §§839.08-839.10, *id.* (also referred to in your inquiry), relevant here for the same reason.

Accordingly, your second question is answered in the affirmative.

AS TO QUESTION 3:

As I understand the facts stated in your letter, the purchase of supplies and office equipment of less than one thousand five hundred dollars is made by the managing director of the authority and not by the members of the authority themselves, and the first question was answered upon that premise. This being so, there would be no question of abstention, as the members of the authority would not vote upon the question of the purchase in question.

As to the proposed sales agreement discussed in question 2: Chapter 72-311, Laws of Florida [§286.012, F. S.], prohibits a member of any "governmental" board, commission, or agency who is present at any meeting of such body from abstaining from voting on official matters "except when, with respect to any such member, there is or appears to be a possible conflict of interest under the provisions of [§§112.311, 112.313-112.315, F. S.]." Under the Standards of Conduct Law, the holding of personal investments that *substantially* conflict with the public duties of a public officer or employee will constitute grounds for dismissal from employment or removal from office. See §§112.314(2) and 112.317, F. S. However, the law does contemplate that a public officer or employee may follow any pursuit and may have private investments or business relations that do not present a substantial conflict of interest, generally speaking, with his public duties or interfere with the full and faithful discharge thereof. It has long been settled in this state that a public officer must, as a matter of public policy, refrain from participating in an official decision when he has a *disqualifying* personal interest in that *particular* decision. See *Stubbs v. Florida State Finance Co.*, 159 So. 527 (Fla. 1935). The exception contained in §286.012, *supra*, must be deemed to be a recognition of this public policy.

The question of what is a disqualifying interest in any given case must, of course, depend upon the facts. Certainly, an interest as officer, director, agent, or owner of a controlling interest in a business entity that is involved in a matter before the governing body would require the interested member to abstain from voting upon that matter, after filing the sworn statement of interest required by §112.313(2), F. S. (if he has not already done so).

It was said in *Aldom v. Borough of Roseland*, 127 A.2d 190, 194 (N.J. Super. 1956), that:

The interest which disqualifies is not necessarily a direct pecuniary one, nor is the amount of such an interest of paramount importance. It may be indirect; it is such an interest as is covered by the moral rule: No man can serve two masters whose interests conflict. Basically the question is whether an official, by reason of a personal interest in the matter, is placed in a situation of temptation to serve his own purposes to the prejudice of those for whom the law authorizes him to act as a public official. . . . The decision as to whether a particular interest is sufficient to disqualify is necessarily a factual one and depends on the circumstances of the particular case [citations]; but in appraising the interest there is no essential difference between cases arising under prohibitory statutes and those necessitating application of the common law.

See also Schauer v. City of Miami Beach, 112 So.2d 838 (Fla. 1959), holding that the motives of a city commissioner in voting upon a zoning ordinance—a *legislative* function—were not proper subjects for judicial inquiry; and Van Italie v. Franklin Lakes, 146 A.2d 111 (N.J. 1958), which also involved a zoning ordinance, in which the court said:

Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in so doing they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials.

It seems clear that, as branch manager of the office supply division of the national manufacturing company, the only personal interest that the branch manager-authority member could have in the proposed sales and construction agreement would be the possibility that the corporation to whom the property is sold might, as a result of this transaction, increase its purchases from the local branch of the national manufacturing company which he represents. If this possibility is merely remote and speculative, I do not conceive that the member in question would have the right to abstain from voting upon the matter under §286.012, *supra*; if the expectation is a probable consequence of the consummation of the transaction, I have the view that he could validly abstain from voting thereon and, in fact, should do so as a matter of public policy.

073-122—April 17, 1973

WETLANDS

LEGAL INTERPRETATION OF TERM "WETLANDS"

To: Mallory Home, Senate President, Tallahassee

Prepared by: Arthur C. Canaday, Assistant Attorney General

QUESTION:

What is the legal interpretation of the term "wetlands"?

SUMMARY:

The term "wetlands," in and of itself, has no precise legal interpretation, but legislatures have utilized the term in laws dealing with coastal zones by adding a statutory definition of "wetlands" pegged to biological, physiographic, or tidal data or a combination thereof.

Without any qualifying or descriptive language, the word "wetlands," in and of itself, would not have a precise legal definition that I can determine. The legislative approach in other states has been to define the term within the act in which it appears. *See, e.g.,* The Coastal Wetlands Protection Act of Massachusetts (Act, 768-1965); The Virginia Wetlands Act (Ch. 21.1-13.1 *et seq.*, Laws of Virginia).

In many cases coastal wetlands are identified and defined separately from interior wetlands. They both may be defined by tying the areas involved to physiographic or biological indices, as well as tidal data. Marine biologists have