

sued to him, or when the name of the licensee is changed by marriage or otherwise, such person shall within ten days thereafter notify the department in writing of his old and new addresses, or of such former and new names, and of the number of his license.

It appears clear that the legislature intended only that the applicant notify the department of a name change and nothing more. Obviously, complete reexamination of the applicant is not required.

Accordingly, reexamination of applicants for drivers' licenses at an interval shorter than four years, without good cause shown, is not required by the laws of Florida.

073-439—November 27, 1973

STANDARDS OF CONDUCT LAW

PURCHASE OF CITY PROPERTY BY CITY COMMISSIONER PROHIBITED

To: Frank L. Kunberger, City Attorney, Fort Meade

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a city commission member purchase property owned by the city and set aside for industrial development when a per-acre price has been established for the property, the purchase and sale has been approved by the city's industrial park board, and the member abstains from voting on the question?

SUMMARY:

The purchase and sale of city-owned property by and between the city commission and one of its members is a "business transaction" within the purview and prohibition of §112.314(1), F. S., and is also contrary to public policy.

The Standards of Conduct Law, §112.314(1), F. S., prohibits a public officer or employee from transacting any business with any business entity of which he is an officer, director, or member, or in which he owns a controlling interest. This statute has uniformly been interpreted by my predecessor in office and by me as prohibiting the governing body of which such an official is a member from entering into a business transaction with the official himself or with any business entity in which he has the described interest. It was held in AGO 070-132 that a rental agreement by which a public official undertook to rent his own personal office furniture and equipment for official use "would unquestionably be a business transaction within the meaning of this statute." *Accord:* Attorney General Opinion 071-239, holding that a board of county commissioners may not grant a garbage franchise to a member of the board.

Moreover, as noted in AGO 070-132, *supra*, even in the absence of statute, such a business transaction would be contrary to public policy and, at least, voidable. The general rule in this respect was stated in AGO 067-66, as follows:

Public officers may not make contracts, in their official capacity, with themselves or become interested in contracts so made, or make contracts which it is their official business to see faithfully performed. A public officer, or board, may not make contracts with a board, firm or corporation of which he is a member or a part. (67 C.J.S. 406 and 407, Sec. 116) A governmental board cannot make a contract with one of its own

members, nor can a public officer make a contract, affecting the public, with a firm or corporation of which he is an officer.

Decisions illustrative of this rule are *City of Miami v. Benson*, 63 So.2d 916 (Fla. 1953) (contract by the city to sell bonds to its agent, advisor, and employee); *Watson v. City of New Smyrna Beach*, 85 So.2d 548 (Fla. 1956) (construction contract between city and the construction-firm partner of a city commissioner); and *City of Leesburg v. Ware*, 153 So. 87 (Fla. 1934) (purchase of bonds by city bond trustees through secretary from bank of which secretary was an officer). The fact that the transaction is open and aboveboard and that there is no suggestion of bad faith, fraud, or corruption is irrelevant. As noted in *City of Miami v. Benson*, 63 So.2d at 919,

The question here is *not* whether the contracts in question were entered into in bad faith, or corruptly, or for the purpose of perpetrating a fraud upon the taxpayers, but rather—are the contracts against public policy and, therefore, void?

As noted in ACO 071-281, §112.314 contains no exceptions to its prohibitions (such as abstention from voting) as does §839.091, F. S., in counties of less than 100,000 population. The prohibition of §112.314(1) is absolute. Thus, even though the particular circumstances here would not appear to give the official any advantage over other purchasers, it must be concluded that it is a prohibited transaction under §112.314(1) and as a matter of public policy.

Accordingly, your question is answered in the negative.

073-440—November 28, 1973

MUNICIPAL HOME RULE POWERS ACT

APPLICABILITY TO DADE COUNTY MUNICIPALITIES

To: *Thomas H. Anderson, Miami Shores Village Attorney, Miami*

Prepared by: *Jan Dunn, Assistant Attorney General*

QUESTION:

Is Miami Shores Village bound by the provisions of §166.041(6), F. S., as created by Ch. 73-129, Laws of Florida?

SUMMARY:

Since there is a constitutional provision prohibiting the legislature from amending or repealing the charter of any municipality in Dade County, no such municipality is bound by the provisions of §166.041, F. S., as created by Ch. 73-129, Laws of Florida.

Section 166.041, F. S., as created by Ch. 73-129, Laws of Florida, provides a uniform procedure for the adoption of municipal ordinances and resolutions.

Article VIII, §11(1)(g), State Const. 1885, incorporated into Art. VIII, §6(e) State Const. 1968, contains a provision to the effect that:

(1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body. This charter:

(g) Shall provide a method by which each municipal corporation in