

as a driver in a motor vehicle accident is licensed as a driver under the laws of Florida may take an appreciable length of time even in the most optimum situation; and a requirement that the determination be made prior to the administration of a blood test pursuant to §322.261(1)(b) might, in fact, negate the very purposes of the test. Your first question is answered in the affirmative.

As applicable to your second question, §322.261(1)(j), F. S., provides:

A nonresident or any other person driving in a status exempt from the requirements of the driver's license law shall by his act of driving in such exempt status be deemed to have expressed his consent to the provisions of this section.

Clearly, the legislature intended that the provisions of §322.261, F. S., should apply to drivers licensed by our sister states, who, by their act of driving within this state, become subject to the operation of §322.261. Thus, assuming that drivers licensed by a sister state otherwise fall within the ambit of the facts and law as discussed above in response to your first question, your second question is answered in the affirmative.

073-362—September 25, 1973

#### STANDARDS OF CONDUCT

#### APPLICABILITY TO MEMBERS OF COUNTY PLANNING COMMISSION

*To: County Planning Commission*

*Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTIONS:

1. Are members of a county planning commission subject to the Standards of Conduct Law, §§112.311-112.318, F. S.?
2. May persons whose professions and occupations relate to the development and sale of property within a county or the rendering of services and the selling of materials to developers actively carrying on development operations within the county serve as members of a county planning commission under the Standards of Conduct Law?

#### SUMMARY:

Members of an advisory body such as a county planning commission are subject to the Standards of Conduct Law, §§112.311-112.318, F. S. Persons whose professions and occupations relate to the development and sale of property within the county or the rendering of services and the selling of materials to developers actively carrying on development operations within the county are not disqualified under the law from serving as members of the commission. However, they should abstain from voting upon a matter before the commission if, by reason of their profession or occupation, they would benefit substantially from the commission's action, either directly or indirectly. A sworn statement disclosing an interest in a business entity which is subject to the regulations of or which has substantial commitments from a public agency should be filed with the circuit court clerk by the commissioners, as required by §112.313 (2).

#### AS TO QUESTION 1:

The Standards of Conduct Law applies to all officers and employees of a state

agency or county, city, or other political subdivision of the state and is intended to "serve not only as a guide for official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of part III of chapter 112. [the law]." Section 112.311, *supra*. The county planning commission in question is a statutory body whose members are "public servants," performing a valuable and useful service in the community, even though their recommendations may be rejected by the board of county commissioners. There is nothing in the Standards of Conduct Law to indicate that public servants who act only in an advisory capacity are not required to comply with the high standards of conduct prescribed by the law, insofar as they may be applicable; and no reason for such an exception can be conceived. *Accord*: Attorney General Opinion 070-155.

Accordingly, your first question is answered in the affirmative.

#### AS TO QUESTION 2:

The legislative policy represented by the Standards of Conduct Law, as declared in §112.311, *supra*, is that no public officer or employee shall have "any interest, financial or otherwise, direct or indirect, or 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 duties in the public interest." However, as stated in §112.316, *supra*,

It is not the intent of this [law], nor shall it be construed, to prevent any [public officer or employee] from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such [public officer or employee] of his duties to the state or the county, city, or other political subdivision of the state involved.

The business and professional activities of the current members of the commission are: banker, architect, engineer, agriculturalist, chief executive officer of a residential development corporation, and a building materials supplier. The particular "standards of conduct" prescribed by the law which might be applicable here are found in §§112.313(4) and 112.314(2), *supra*. The former prohibits a public officer or employee from accepting any employment or engaging in any business or professional activity "which he might reasonably expect would require or induce him to disclose confidential information acquired by him by reason of his official position." As noted in AGO 073-13, this statute "appears to place some responsibility for resolving the question upon the officer or employee himself—presumably because he is in the most advantageous position to do so." Here, apparently, the governing bodies of the cities and the county by whom the appointments were made—and the appointees themselves—have initially resolved this question in favor of the appointments; and it is not immediately apparent that their resolution of the question in respect to any particular member was erroneous.

Section 112.314(2), *supra*, prohibits 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." (Section 112.313(6), *supra*, which formerly prohibited a public officer or employee from accepting other employment "which might impair his independence of judgment in the performance of his public duties," was invalidated by the Supreme Court in *State v. Llopis*, 257 So. 2d 17 (Fla. 1971), on the ground of vagueness.) But I do not interpret §112.314(2) as prohibiting a property owner or person engaged in a particular business or profession from qualifying to run for public office or from accepting an appointment to an appointive public office because of the mere possibility that, in the future, some decision of the board or commission of which he is a member might incidentally affect his own personal interest. Here, for example, one of the duties of the county planning commission is to prepare a master plan for the development of the county and the municipalities therein; and it is difficult, if not impossible, to conceive of a policy decision in this respect that would not affect the

members of the commission, either directly or indirectly, whatever business or profession they were engaged in, together with all other citizens and residents of the community.

I have heretofore ruled in AGO 073-215 that the ownership of a controlling interest (more than 10 percent) of stock in an engineering corporation does not disqualify a person from holding the office of county commissioner. And in AGO 073-231 I ruled that the ownership of a substantial purchase money mortgage on property of a corporation active in land development in the county did not disqualify a person from holding the office of county commissioner. And, in my opinion, the fact that a member of the planning commission might, in the future, incidentally benefit from a change in zoning recommended by the commission is not the type of *substantial* conflict that will disqualify him from *serving on the commission*.

The question of whether he should abstain, as a matter of public policy, from voting upon a proposition before the commission on account of a conflicting personal interest, as authorized by §286.012, F. S., is not presented here. However, it might be noted that in AGO 073-236 I ruled that a city councilman is not required to abstain from voting upon a request for a zoning change made by one of his regular business customers unless the granting of such request would necessarily result in a substantial benefit to the city councilman's business, and that an increase of 10 percent in the annual gross income of such business is sufficiently substantial to require abstention from voting. *Accord:* Attorney General Opinion 073-198, ruling that a city commissioner who is a member of the board of directors of a nonprofit corporation should abstain from voting upon a zoning change applied for by that corporation.

Your second question is answered in the affirmative.

The attention of the officials in question should be directed to the provisions of §112.313(2), F. S., requiring a public officer or employee who serves as an officer, director, agent, or member of, or owner of a controlling interest in, any business entity which is "subject to the regulation of, or which has substantial business commitments from" any public agency to file a sworn statement disclosing such interest with the clerk of the circuit court, or the secretary of state, as the case may be.

073-363—October 1, 1973

#### PUBLIC EMPLOYEES

#### GROUP HOSPITALIZATION INSURANCE FOR HOSPITAL EMPLOYEES

To: Alfred O. Shuler, Attorney at Law, Apalachicola

Prepared by: Stephen F. Dean, Assistant Attorney General

#### QUESTION:

Is a county hospital board of trustees authorized to purchase hospital insurance for employees of said hospital?

#### SUMMARY:

A county hospital organized and operating under Ch. 155, F. S., and its governing board of trustees are agencies or instrumentalities of the county, and as such are within the purview of §§112.08 through 112.14, F. S., providing a group insurance plan for public officers and employees. Pursuant to §§155.11 and 112.12, all or part of the expense of providing life, health, accident, or hospitalization insurance, upon a