

Transportation Disadvantaged Commission

Number: INFORMAL

Date: September 22, 2004

The Honorable Atlee Mercer
Osceola Board of County Commissioners
1 Courthouse Square, Suite 4700
Kissimmee, Florida 34741

Dear Commissioner Mercer:

Thank you for considering this office as a source of assistance in determining whether members of the Florida Commission for the Transportation Disadvantaged have violated the Florida Code of Ethics for Public Officers and Employees, or other provisions of the Florida Statutes. Attorney General Charlie Crist has asked me to respond to your inquiry.

You refer to section 112.313, Florida Statutes, which is a part of the Florida Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes. The Florida Commission on Ethics is statutorily charged with interpreting the provisions of the ethics code and investigating complaints regarding violations of code provisions.[1] Accordingly, your request for an investigation of any violation of Part III, Chapter 112 should more appropriately be addressed to the Ethics Commission rather than to this office. Ms. Bonnie J. Williams is the Executive Director of the commission and may be contacted at the following address: Florida Commission on Ethics, Post Office Drawer 15709, Tallahassee, FL 32317-5709; telephone 850/488-7864; fax 850/488-3077. In addition, the Florida Commission on Ethics maintains a website at: www.ethics.state.fl.us.

In an effort to be of some assistance, however, I would generally note that section 427.012(1), Florida Statutes, in creating the Commission for the Transportation Disadvantaged, requires that membership on the commission consist of, among others,

"(i) A representative of the Florida Transit Association, who shall serve at the pleasure of that association.

* * *

(o) Two representatives of current private for-profit or private not-for-profit transportation operators each of which have a minimum of 5 years of continuous experience operating a broad-based system of ambulatory and wheelchair/stretchers type transportation, utilizing not less than 50 vehicles and including dispatch and scheduling responsibilities. Such persons shall be appointed by the Commissioner of Agriculture to serve a term of 4 years.

(p) Four representatives of current private for-profit or private not-for-profit transportation operators, each of which having a minimum of 5 years of continuous experience operating a

broad-based system of ambulatory and wheelchair or stretcher-type transportation, utilizing not less than 50 vehicles, and including dispatch and scheduling responsibilities. Such persons shall be appointed by the Commissioner of Agriculture to serve a term of 4 years."

I would further note that section 112.3143(3)(a), Florida Statutes, prohibits a county, municipal, or other local public officer from voting on any measure which inures to his or her special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal or parent organization or subsidiary of a corporate principal, other than a public agency, by whom he or she is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the officer.

State officers, however, are not included in the above prohibition. Section 112.3143(2), Florida Statutes, provides that "[n]o state public officer is prohibited from voting in an official capacity on any matter." If a state officer votes on a matter that would inure to his or her special private gain or loss, or to the special gain or loss of any principal or parent organization or subsidiary of a corporate principal by which the officer is retained, or to the special private gain or loss of a relative or business associate, the state officer is required to disclose the nature of his or her interest in a memorandum. The memorandum must be filed within 15 days after the vote with the person responsible for recording the minutes of the meeting who shall incorporate the memorandum in the minutes.[2]

I trust that the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

cc: Bonnie J. Williams

[1] See s. 112.322, Fla. Stat.

[2] Section 112.3143(2), Fla. Stat. *And see* s. 112.3143(4) provides in part:

"No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, *without first disclosing the nature of his or her interest in the matter.*" (e.s.)

The term "participate" is defined to mean "any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction." Section 112.3143(4)(c), Fla. Stat.