Abstension from voting

Number: INFORMAL

Date: June 16, 2011

Subject:
Abstension from voting

Mr. Edward Rodgers
Chairman, Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Dear Mr. Rodgers:

On behalf of a majority of members of the Palm Beach County Commission on Ethics, you have requested our assistance in determining whether a member of a local commission on ethics who is present at a meeting of the board may abstain from voting on a measure to avoid creating an appearance of impropriety. Attorney General Bondi has asked me to respond to your letter.

Initially, I must advise you that this office is limited by section 16.01(3), Florida Statutes, to providing legal opinions on questions of state law. Thus, the discussion herein is based on an examination of statutes and case law involving section 286.012, Florida Statutes. This office has no authority to comment on the procedures established by local ordinance for the conduct of meetings or hearings of the Palm Beach County Commission on Ethics. You may wish to discuss your concerns with the county attorney who can more fully explore any procedures established in the ordinance or charter provision creating the commission and describing its procedures.

Section 286.012, Florida Statutes, provides:

"Voting requirement at meetings of governmental bodies.—No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143."

Thus, the Legislature has determined that a member of a county board or commission may only abstain from voting "when, with respect to any such member there is, or appears to be, a possible conflict of interest under the provisions of" sections 112.311, 112.313, or 112.3143, Florida Statutes. It is a rule of statutory construction that express exceptions in a statute provide a strong inference that no other exceptions were intended.[1] The phrase "conflict of interest" as

used in sections 112.311, 112.313, and 112.3143, Florida Statutes, means "a situation in which regard for a private interest tends to lead to disregard of a public duty or interest."[2] However, as this office has advised on a number of occasions, any question as to what fact situations may constitute a "conflict of interest" under this statutory definition must be directed to the Florida Commission on Ethics.[3]

An opinion of the Ethics Commission, citing opinions of this office, stated that "it is clear that, when adopting the Code of Ethics (which contains the statutes referenced in section 286.012), the Legislature was concerned primarily with the effect of a public official's economic interests and relationships upon the performance of his public duties. . . . "[4] This opinion was cited by the court in *Izaak Walton League of America v. Monroe County*,[5] in its holding that section 286.012, Florida Statutes, did not permit disqualification from voting of a county commissioner on the grounds of predisposition amounting to bias and prejudice.

I would note that other boards and commissions, including quasi-judicial administrative bodies, conduct quasi-judicial proceedings under section 286.012, Florida Statutes. In Attorney General Opinion 88-62, this office was asked to consider under what circumstances a member of a municipal code enforcement board could recuse himself. Once created, the board was required to adopt rules relating to the conduct of meetings, but the opinion points out that any such rules adopted by the board would be required to conform to section 286.012, Florida Statutes. The opinion reviewed the provisions of Chapter 162, Florida Statutes, for the creation of these quasi-judicial administrative boards and noted that nothing in that chapter provided for the disqualification of a member or members of the code enforcement board from consideration of matters coming before the board. Thus, the opinion concludes that a member of the code enforcement board may not disqualify himself from considering a matter before the board and that, as provided in section 286.012, Florida Statutes, a member who is present at a meeting must vote unless a conflict of interest exists or appears to exist.

While the Commission on Ethics has no jurisdiction to administer section 286.012, Florida Statutes, it has interpreted the "appears to be a possible conflict" language of that statute. As the Commission advised in its letter to Mr. Farach of June 2, 2011, "non-economic bias or prejudice on the part of a public officer toward someone affected by a measure would not constitute a basis for a valid abstention pursuant to Section 286.012."[6] This office would concur in the Commission's analysis and conclusion.

Thank you for considering the Florida Attorney General's Office as a source for assistance in this matter. I trust that these informal comments will be helpful to you. This informal advisory opinion is provided in an effort to be of assistance. The comments expressed herein are those of the writer and do not constitute a formal Opinion of the Florida Attorney General.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See Biddle v. State Beverage Department*, 187 So. 2d 65 (Fla. 4th DCA 1966); and *State Road Department v. Levato*, 192 So. 2d 35 (Fla. 4th DCA 1966), *cert. discharged*, 199 So. 2d 714 (Fla. 1967).

[2] Section 112.312(8), Fla. Stat.

[3] *See e.g.*, Op. Att'y Gen. Fla. 87-17 (1987), 86- 61 (1986), and 85-40 (1985); *and see* s. 112.322(3), Fla. Stat., providing that public officers seeking interpretations of the Code of Ethics or the applicability of these statutes may request an advisory opinion of the Commission on Ethics.

[4] *See* CEO 79-14, dated March 22, 1979.

[5] 448 So. 2d 1170 (Fla. 3d DCA 1984).

[6] Letter to Manual Farach from Virlindia Doss, Florida Commission on Ethics, dated June 2, 2011.