# Can a city decide an ethical violation under s. 112.313

**Number:** INFORMAL

**Date:** April 06, 2018

Mr. Richard A. Harrison
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Dear Mr. Harrison:

On behalf of the City of Palm Bay ("City"), you have requested an opinion addressing whether, in the course of a local ethics investigation, the City can determine whether an elected official has violated section 112.313(7), Florida Statutes (2017), regarding conflicting employment or contractual relationships. Attorney General Bondi has asked that I respond to your letter. In so doing, only article II, section 8 of the Florida Constitution, and part III of chapter 112, Florida Statutes, are considered.[1] No comment is made regarding any other ethics standards, policies, or provisions reflected or referenced in City ordinances or resolutions.[2]

*Only the Florida Commission on Ethics Can Determine Alleged Violations of Chapter 112*

As you suggest in the legal memorandum submitted with your letter, review of the Florida Constitution and part III of chapter 112, Florida Statutes (the "Code of Ethics for Public Officers and Employees", or "Code"), provides the answer to your question: only the Florida Commission on Ethics can determine violations of the state ethics Code. Article II, section 8 of the Florida Constitution establishes a set of mores for ethical conduct applicable to constitutional officers, public officers, public employees, and candidates. Under that provision, a "public office is a public trust[,]" and the people of Florida "shall have the right to secure and sustain that trust against abuse."

To assure this right, the Florida Constitution provides (among other things) that a "code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law."[3] It further specifies that there "shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission."[4 Article II, section 8, expressly provides that "[t]he independent commission provided for…shall mean *the Florida Commission on Ethics*."[5]

As the Florida Supreme Court has stated:

"[W]here the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. Even though the Constitution does not in terms prohibit the doing of a thing in another manner, the fact that it has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner of doing it.

Therefore, when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision."[6]

No such conflict between the Florida Constitution and state statute appears here, however. Instead, the manner prescribed in the constitution for adjudicating violations of the state ethics Code is mirrored in part III of chapter 112, Florida Statutes, the law implementing the constitutional mandate. In pertinent part, section 112.320 provides:

"There is created a *Commission on Ethics*, the purpose of which is to serve as guardian of the standards of conduct for the officers and employees of the state, and of a county, city, or other political subdivision of the state, as defined in this part, and *to serve as the independent commission provided for in s. 8(f), Art. II of the State Constitution.*"

(Emphasis added.)

The "standards of conduct" to which section 112.320 refers are those contained in both the State Constitution and the Code. As described in section 112.320(6):

"It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics *consistent with this code and the advisory opinions rendered with respect hereto* regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern."

(Emphasis added.) Under section 112.322 (3)(a), it is, again, the *Florida Commission on Ethics* that provides these advisory opinions—which "establish the standard of public duty" under the Code—under specified circumstances, and upon request, to any "public officer, candidate for public office, or public employee."

Thus, pursuant to both the Florida Constitution and the Code, in response to complaints alleging state Code violations by specified public officers or employees, only the Florida Commission on Ethics can determine whether such violations have occurred. A city has neither jurisdiction nor authority, in conducting a local ethics investigation, to determine whether an elected official has violated section 112.313(7), Florida Statutes, regarding conflicting employment or contractual relationships. I trust that these informal comments will be helpful.

Sincerely,

Teresa L. Mussetto
Senior Assistant Attorney General

TLM/tsh

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[1] *See* § 16.01(3), Fla. Stat. (2017); *see also* Frequently Asked Questions About Attorney General Opinions (available at http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad) (last visited February 5, 2018).

[2] These appear to include City of Palm Bay, Fla. Ordinance No. 69-10 (embodying a local ethics code); City of Palm Bay, Fla. Ordinance No. 72-2 (amending Ordinance No. 69-10); City of Palm Bay, Fla. Ordinance No. 2000-22 (codified, in pertinent part, at § 34.10 of the Palm Bay Code of Ordinances, and requiring compliance with part III of ch. 112, Fla. Stat. [the "Code of Ethics for Public Officers and Employees"] "and amendments"); ch. 8 of the City of Palm Bay, Fla, Council Policies and Procedures (adopted by resolution on July 1, 2004, and reflecting the "Code of Ethics for Public Officials (City Council, Boards, Commissions, Committees)"); and the following parts of the Palm Bay Code of Ordinances: § 10.99 (specifying penalties for City Code or ordinance violations); § 34.02 (making §§ 34.09 and 34.10 applicable to "the City Council, members of city boards and committees, and volunteers," as well as City employees); and § 34.09 (requiring compliance with § 112.3135, Fla. Stat. ["Restriction on employment of relatives"], "and amendments").

[3] Art. II, § 8 (g), Fla. Const. The phrase "by law," as used in the Florida Constitution, contemplates an enactment of the Legislature. *See Grapeland Heights Civic Ass'n v. City of Miami*, 267 So. 2d 321, 324 (Fla. 1972) (citing art. III, § 6, Fla. Const.).

[4] Art. II, § 8 (f), Fla. Const.

[5] Art. II, § 8 (i)(3), Fla. Const. (Emphasis added).

[6] *Bush v. Holmes*, 919 So. 2d 392, 407 (Fla. 2006) (citing *Weinberger v. Bd. of Pub. Instruction* , 112 So. 253, 256 (1927); *S & J Transp., Inc. v. Gordon*, 176 So. 2d 69, 71 (Fla. 1965) ("[W]here one method or means of exercising a power is prescribed in a constitution it excludes its exercise in other ways")).