



Florida Public Meetings Law

Elected Official Ethics Training
Florida League of Cities University



Agenda

- Basics
- Exemptions to Public Meetings Law Requirements
- Notice and Minutes
- Location and Participation
- Quasi-Judicial Proceedings
- Concluding Thoughts



Basics



Purpose and Intent

Purpose:

- to make all government-related meetings “**public meetings open to the public at all times...**”

Intent:

“Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the **entire decision-making process** that the legislature intended to affect by the enactment of the statute before us. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest.”

Times Publishing Company, etc. v. Williams, 222 So. 2d 470 (2 DCA 1969)



Four Basics For Compliance With Public Meeting Requirements

- Notice
- Location
- Minutes
- Public Participation



What is a Public Meeting?

Florida Constitution

Meeting of a collegial public body at which official acts are taken or business discussed

Florida Statutes

Meeting at which official acts taken

Case Law

All meetings where there are discussions of matters which may foreseeably come before a board or commission

“All meetings” include staff, committees, temporary groups or even a single person.



Who is Covered?



“...any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision...”

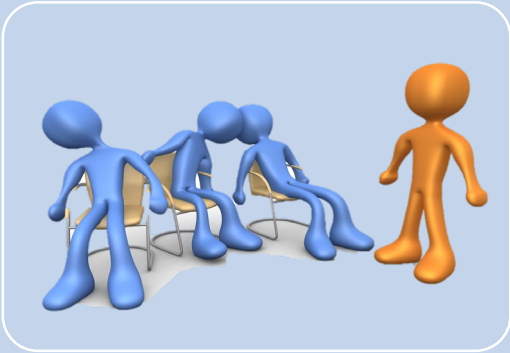
Section 286.011(1) F.S.

Essentially, any gathering of the members of a public body within the state where the members deal with some matter on which *foreseeable action* may be taken by the body.

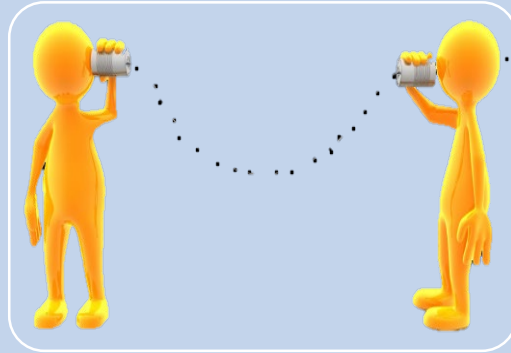
See *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971)



What Constitutes a Meeting?



Meetings/gatherings of two or more individuals to whom the public entity has delegated the conduct of public business are subject to Open Meetings requirements.



Use of non-members or staff to communicate information and thoughts is subject to the Open Meeting requirements. (Use of conduit)



Email communications or written reports or correspondence between members is generally not a meeting provided it is not used as a means to exchange thoughts, ideas and opinions among members. (It is, however, a public record.)

The Entire Decision Making Process

“...it is the **entire decision-making process** that the legislature intended to affect by the enactment of the statute before us. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest.”

Times Publishing Company, etc. v. Williams, 222 So. 2d 470 (2 DCA 1969)



The Entire Decision Making Process

Informal discussions, workshops, executive work sessions, conferences . . . all are covered.

*“One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. **Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors.** The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken.”*

Town of Palm Beach v. Gradison, 296 So. 2d 474 (Fla 1974)



Questions???



Exemptions to Public Meetings Law Requirements



Exemptions

- The Sunshine law is to be liberally construed to accomplish its public purpose – exemptions shall be narrowly construed.

See *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla 1969)

- Exemptions are created by a 2/3 vote of the Legislature and are generally subject to review and automatic repeal every five years unless renewed.



Major Exemptions from Public Meetings Law

- Pending litigation
 - settlement negotiations
 - strategy sessions
 - expenditures
- Labor negotiations-bargaining team
- Risk management committee
- Security system meeting
- Negotiation with a vendor



Notice and Minutes



Notice

- * *Reasonable notice required, but the law does not set up specific notice guidelines.*



**MEETING
NOTICE!**

“...its purpose was to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wished.” (approved 3-day notice)

Rhea v. City of Gainesville, 574 So. 2d 221,222 (Fla 1 DCA 1991).



Attorney General's Office Suggested Notice Guidelines

- Notice should contain the time and place of the meeting and agenda or a summary of the subject matter
- Notice should be prominently displayed in an area in the agency's office set aside for such purposes
- If it is an emergency meeting, the most appropriate and effective notice under the circumstances should be provided and at least 24 hours reasonable notice to the public
- Use of press releases and/or phone calls to the media is effective



Additional Notice Requirements

- For “Quasi-Judicial” – Notice that if a party wishes to appeal a quasi-judicial decision, they may need a verbatim record of the meeting.
- Notice to persons with disability or a language barrier to contact the City if they require a special accommodation to participate in the meeting.



Minutes

- Minutes must be taken
- A recording is **not** required
- Minutes of meetings become the official record of the proceedings and therefore should be carefully reviewed for accuracy before approved



Questions???



Location and Participation



Location

- Public access is **most important**
- Meetings should not occur in restaurants, small rooms, out-of-town or in other places that unreasonably limit access
- **Section 286.011(6) F.S.** expressly prohibits the holding of any meeting subject to the Sunshine law at any facility “which discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in such a manner as to unreasonably restrict public access to a facility.”



Public Participation

Section 286.0114, F.S. (adopted 2013) Public Participation Law

- Members of the public shall be provided an opportunity to address any appointed or elected body during the decision making process and prior to the body taking official action
- This applies to any action item
- Failure to comply could result in an award of attorney fees against the local government



Public Participation

Other Considerations

- Public has the right to hear all comments made to or by members of the body. Private conversations and side bars should be avoided.
- Receipt of messages, private notes or emails during meeting must be avoided.
- Time limits are permissible as long as they do not unreasonably restrict access.
- The presiding officer can regulate comment to avoid repetitive, irrelevant or disruptive comments or behavior.
- A member of the public can video tape or record any meeting.



Violations – Impact on Action Taken

- Action taken at a meeting that was not open to the public, whether intentional or not, by operation of **Section 286.011(1), F.S.** is void.
- Curative measures can be taken. A full open hearing and not a ceremonial simple ratification of the action will cure the defect and validate the action. It is not enough to simply re-notice the action and seek public comment on the matter at a subsequent public meeting.



Recent Case

- Citizens for Sunshine, Inc. v. School Board of Martin County (125 So.3d 184, Florida Fourth DCA [2013])
 - At three school board meetings, multiple people voiced concerns about the district's adult education school.
 - After the third meeting, three school board members visited the school without any notice of the visit.
 - During the visit, the board members asked the school's coordinator about teacher contracts, support received, teaching materials and staff morale.
 - The testimony was the board members did not take any formal action, did not deliberate or decide anything. "They came, they saw and they left." – Quoted testimony from the hearing
 - Sued by a non-profit for violating Sunshine because there was no notice.



- The Appellate Court said there was a substantial likelihood of a Sunshine Law violation:
 - “The undisputed evidence showed that the defendant board members, without providing notice, conducted a meeting at the adult education school relating to matters on which foreseeable action would have been taken. The coordinator and the defendant school board members discussed: the coordinator's duties; a summary of which teachers were on contract; the support which the school received; appropriate teaching materials; rumors about whether the school would remain open or would close; and staff morale at the school.”



Recent Cases

- **Finch v. Seminole County School Board** (995 So.2d 1068, Florida Fifth DCA [2013])
 - School Board needed to revise attendance zones because of a new high school.
 - Three proposed alternative plans to address the zoning were created.
 - After receiving the plans, the members of the School Board, the Superintendent and Deputy Superintendent of Schools, two members of the media, two candidates for the School Board, and a representative of the transportation sector of the school system were taken on a school bus tour of the neighborhoods that would be affected by the rezoning.
 - The purpose of the tour was to enable the members of the School Board to physically view the potentially impacted areas and to look at possible school bus routes that might be utilized, depending on which plan was finally adopted. The School Board viewed this as a “fact finding” trip, and thus not covered by the Sunshine Law.
 - As a precautionary measure, the School Board members were separated from each other by several rows of seats. According to the evidence, no member discussed his or her preference for any of the plans, no opinions were expressed, and no vote was taken during the trip. Likewise, no minutes of anything that happened on the trip were taken.



- A week later the School Board convened a public meeting that lasted between five and seven hours, and was attended by 800 to 900 people. The public was given ample opportunity to make comments at the meeting. Following the public input segment, the Superintendent made his recommendation for one of the proposed plans. One School Board member spoke in favor of modifying the plan, but was eventually convinced that the proposed plan with slight modifications would best meet the needs of the community.
- After a lengthy discussion the School Board unanimously approved the plan with some changes, and authorized the advertising of the selected plan for final adoption a month later.



- The School Board was sued for violating the Sunshine Law and on appeal, the Fifth DCA said very directly that it had:
 - “In the present case it is clear that the School Board was not an advisory board. It had ultimate decision-making authority; it was gathered together in a confined bus space; and it undoubtedly had the opportunity at that time to make decisions outside of the public's scrutiny. We conclude, therefore, that the conduct of the bus tour, indeed, constituted a violation of the Sunshine Law.”
- However, the School Board was lucky in one sense because of its subsequent actions:
 - “In the present case we conclude that the bus tour violation was not egregious and was cured by the subsequent public hearings at which the rezoning plan was adopted. It was certainly not a willful violation of the Sunshine Law. Rather, there appeared to be an effort on the part of the School Board to comply with the statute. In this respect we note that the bus trip was hardly a secret. Two members of the media, in fact, were invited along. In addition, the School Board made efforts to assure that the board members were separated spatially, and that no discussions concerning the selection of a plan took place.”



Questions???



Quasi-Judicial Hearings



Quasi-Judicial Proceedings

- For the purpose of securing evidence of fact and expert opinion.
 - Zoning hearings are the classic case
- Decisions made must be based on ‘competent and substantial evidence’ and are not merely matters of opinion or preference
 - They are ‘quasi-judicial’ . . . like a court of law



Quasi-Judicial Proceedings

- Interested parties have the right:
 - To hear/receive all testimony presented to the board
 - To refute such testimony
- ‘Ex parte’ communications are presumed to be prejudicial
 - Communications to decision makers outside of the hearing and not shared with the relevant other party(ies)



Quasi-Judicial Proceedings

- In 1995 the Florida Legislature adopted **Sec. 286.0115 F.S.** as a means to promote open communication between local elected officials and citizens and applicants
- Allows a City to eliminate the presumption by adopting a resolution or ordinance establishing a process to address ex parte communications



Quasi-Judicial Proceedings

Members of a body sitting in a quasi-judicial capacity may:

- Talk to individuals (other than members of the body) about a quasi-judicial matter which may come before the body
- Conduct their own inspection related to a quasi-judicial matter
- **Provided that disclosure of the ex parte communication is made to the public at the time that the matter is considered by the body**



Questions???



Concluding Thoughts



Four Basics For Compliance With Public Meeting Requirements

- Notice
- Location
- Minutes
- Public Participation



Ask Yourself . . .

- Was this meeting **set up** according to all of the public meeting requirements?
- Does it **look like** I might be engaged in **improper communication**?
 - A one-on-one discussion with a colleague at a social function
 - A side bar with a colleague off microphone during a meeting
 - A conversation with one or more colleagues during a break
- Have we provided **all interested members** of the public the **opportunity to be heard**?
- Have my colleagues and I **explained ourselves** sufficiently during deliberations so that our decision and our reasons are **clear to the public**?



Then . . .

Ask Your City Attorney!



Florida Public Meetings Law

Elected Official Ethics Training
Florida League of Cities University





Florida Public Records Law

Elected Official Ethics Training
Florida League of Cities University



Agenda

- What is a Public Record?
- Public Records Requests
- Records Retention and Disposal
- Concluding Thoughts



What is a Public Record?



What is a Public Record?



Section 119.011(12), F.S.:

- “All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any City.”



What is a Public Record? General Court Opinions

Florida Supreme
Court - 1980

All materials made or received by a City in connection with official business which are used to perpetuate, communicate or formalize knowledge.

Florida Supreme
Court – 1979

All materials regardless of whether they are in final form.

Florida 1 DCA – 2009

Not limited to traditional written documents, includes tapes, photographs, recordings, and items in digital form.



What is a Public Record?

Drafts and Notes



- There is no “unfinished business” exception. Public records include:
 - **Interoffice or intra-office memorandum** between government employees and/or officials
 - **Working drafts**, if they are circulated for review or comment
 - **Notes**, to the extent they perpetuate, communicate, or formalize knowledge
 - Notes intended solely for personal use have been determined to *not be* public records
 - If the notes were taken to confirm or summarize what was discussed at a meeting or discussion regarding city business, then they are likely a public record, because the notes formalize knowledge



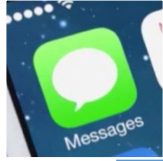
What is a Public Record?

Electronic and Computer Records



Electronic databases

- Information stored in a public agency's computer system.
- If a City acquires an electronic recordkeeping system, the City must consider whether the system is capable of providing data in a common digital format.



E-Mail and Text messages

- Made or received by City officers, elected officials and employees in connection with official business.
- This applies regardless of the device (computer, tablet, smart phone) that is used.



Social Media

- Posts on Facebook, Twitter, Instagram, LinkedIn, Youtube, etc.

What is a Public Record? Personal Records

Form of the record is irrelevant, key is whether the record has been created, maintained, or received, by an official, employee or agent of the City and is related to official business.

Documents created on personal computers.

Emails and texts on personal computers and devices.

Records of personal phone calls made on city issued cell phones.

Personal flight logs of pilots paid by a county.

Agencies Subject to Public Records Law

Government body, to include, its elected officials, employees and agents

Advisory boards

Private entities created by a public entity:

- Community Development Districts
- Community Redevelopment Agency
- Dependent Districts
- Utility and other authorities

Private entities doing business with the entity (receiving public funds)

- Contracts require compliance with public records law
- Does not apply to all private entity's records, essentially only those related to the public business



Recent Case

- O'Boyle v. Town of Gulf Stream (2018 WL 5291287/4D17-2725, Florida Fourth DCA [October 24, 2018])
- Public Records Act violations alleged for two separate public records requests:
 - (1) for copies of bills and payments sent to the Town for services rendered by the Town's attorney; and
 - (2) for copies of text messages sent or received by the Town's Mayor since the time of his appointment.
- It was specifically alleged that the Town produced illegitimately redacted copies of the bills and payments. In another claim, it was asserted that the Town produced “a cherry picked” selection of texts which painted O'Boyle “in a negative light.”
- After another records request that produced additional, previously unseen texts, O'Boyle insisted that the initial release was incomplete and that the Town and Mayor deliberately concealed records from the public.



- The Court’s Analysis, starting with the text messages:
 - “This is an action against a municipality to obtain records that, while potentially related to the Town's public business, are in the exclusive control of one of their elected officials. An elected official's use of a private cell phone to conduct public business via text messaging can create an electronic written public record subject to disclosure. However, for that information to indeed be a public record, an official or employee must have prepared, owned, used, or retained it within the scope of his or her employment or agency. An official or employee's communication falls “within the scope of employment or agency” only when their job requires it, the employer or principal directs it, or it furthers the employer or principal's interests.”
 - “Therefore, not all written communications sent or received by public officials or employees of a government agency are public records subject to disclosure upon request under the Act. *See City of Clearwater*, 863 So.2d at 150. The reach of the Act is to those records related to the employee or official's public responsibilities.”



BUT...

- “Clearly, some of the text messages reviewed by the trial court during this process could include personal or private information, and some could be the subject of legitimate claims of privilege. Deciding which ones may remain private was the very purpose of the protocol ratified by the Supreme Court's *City of Clearwater* decision—review these communications in-camera and afford an opportunity to raise objections to protect against disclosure of irrelevant, privileged, or otherwise non-discoverable materials. To avoid that process altogether, assuming the scope of the request was reasonable, it would have been incumbent on appellees to show some controlling authority that the Public Records Act did not apply, or otherwise prohibited, the submission of the text messages to the court for an in-camera review. No such showing was made here.”
- “Whether O'Boyle's individual claim proceeds further may depend on the outcome of that in-camera review. But for now, we reverse the dismissal on this count of appellants' complaint and remand for the trial court to conduct an in-camera inspection of the disputed text messages sent to and from the Town's Mayor to determine whether any qualify as public records.”



Redacted Attorney Bills

- Following Asset's public records request for attorney billing records, the Town responded by citing work product privilege and only provided redacted copies of the requested records. After appellants filed a motion for in-camera review, but before the dismissal hearing began, the Town acquiesced and provided Asset with a complete set of unredacted billing records. As a result, the Town asserts this issue on appeal is now moot and should be dismissed. **We disagree.**



And here's the bad news...

- “Similar to [Cookston](#) and [Mazer](#), Asset requested records and, after filing a claim with the trial court, the records were provided in their requested form. While it was argued in [Cookston](#) and [Mazer](#) that the issues were rendered moot, the appellate court held that collateral legal consequences affecting the rights of a party still existed—namely, the issuance of fees and costs based on improperly refused, completed, or delayed records requests.”
- “Like those cases, we find this claim was not moot due to the presence of collateral issues yet to be decided by the trial court—specifically, a determination whether the Town's initial redactions of the bills were proper, and whether any reasonable attorney's fees, costs, and expenses, should be awarded. We therefore reverse and remand for a determination of those issues.”



Questions???



Public Records Requests



Florida's Public Records Law

Article I, Section 24 (a) Florida Constitution

- “Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.”

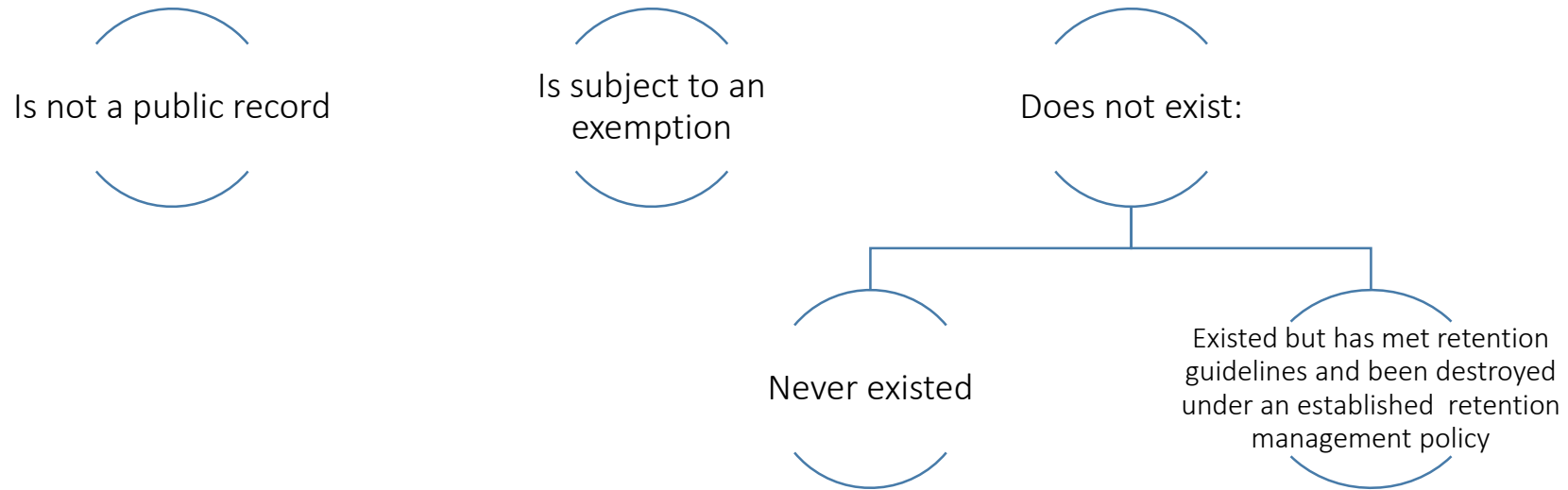
Chapter 119, F.S.

- Provides the public with the right to examine and review records of the state and local governments and, in some instances, private entities.



Florida's Public Records Law

Record must be disclosed and made available for inspection unless the document, material or item:



Responding to Public Records Requests



Section 119.07 (1)(a), F.S.

- “Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision by the custodian of the public records.” (Emphasis added).



Responding to Public Records Requests

“Every Person”

Although the City has a designated Records Custodian (i.e.: City Clerk), the law provides that anyone who has in their possession the requested record is required to provide.

“Any person”

All encompassing and without limitation, any individual, group or company.

The person to whom the request is made cannot require the request be in writing, give a name, contact information or include a reason for the request.

“At any reasonable time, under reasonable conditions”

“Reasonable time” the reasonable time needed to locate the record and make it available for review or copying.

“Reasonable conditions” has been interpreted by the Courts to refer to reasonable conditions required to preserve and protect the document from destruction or alteration. It does not refer to conditions that must be fulfilled prior to the record being provided.



Responding to Public Records Requests

The law requires that the record custodian promptly acknowledge a request and respond in good faith.

- Acknowledgment of receipt of the request, should be done as soon as possible, at least within 24 business hours of receipt.
- Typically the acknowledgment is by written response, letter or e-mail.
- The acknowledgment is not the response to the request but only a statement that the request has been received and the City is working to respond.
- Duty to respond in good faith, includes making reasonable efforts to determine from other officers, employees or agents of the City that the record exists and where it is located.



Responding to Public Records Requests

- The City may not refuse to allow inspection of a public record on the grounds that the record is not in the possession of the Official Records Custodian but is in the possession of another City official or employee.
- Similarly the City may not refuse to provide a public record it may have on the grounds that it is maintained by another public agency.
- The City is required to provide a copy of any non-exempt public record that satisfies the request.
 - Providing a copy, however, can be conditioned upon the requestor paying the statutory fees for obtaining and copying the record. (Current copy charges are \$.15 per page)
 - Costs for producing records can include a reasonable charge for the actual labor cost if fulfillment of the request requires extensive use of information technology resources, or extensive clerical or supervisory assistance or both.



Responding to Public Records Requests

- The Public Records Law requires the City to produce for review and copying a public record, it does not:
 - Require the City to create a document that does not exist.
 - Require the City to answer any questions about the document or the matters contained in it.
- The City is required to provide the record in the medium or format requested, but only if the City maintains the record in the specific medium or format.
- Although not required by the Law, the City is authorized to establish a process to allow remote access to public records.



Responding to Public Records Requests

Time to Respond



- The Public Records Law does not establish a specific timeframe for responding to requests.
- According to the Florida Supreme Court the time to respond “is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian exerts are exempt.”
- The reasonable time to respond then, is ultimately determined based on the nature of the request and the volume of documents involved.
- An unjustified or arbitrary delay in producing documents has been deemed an unlawful refusal to provide public records. (45 day delay in responding)



Responding to Public Records Requests

Exempt Records

- If the request seeks documents that are exempt or are subject to an exemption, then the custodian is obligated to state the basis for the exemption including the applicable statute that establishes the claimed exemption.
- If the record contains information that is exempt from disclosure and other information that is not, the custodian must redact the exempt information and provide the redacted record to the requestor.
- In general, the City or the custodian is not liable to a person, if records subject to an exemption are wrongfully produced. Provided, however, the failure to comply with the exemption was by mistake and not an intentional act.



Public Records Requests Exemptions

- All exemptions are created by the Legislature and fall into one of two categories:
 - Records that are exempt in their entirety (autopsy photographs; active criminal investigation materials).
 - Records that contain exempt information (home addresses and telephone numbers of certain individuals).
- Exemptions are strictly construed.
- Exemptions can apply retroactively if the Legislature adopted the exemption with the intent for it to apply retroactively.
- Most exemptions have a sunset provision and therefore, unless renewed by the Legislature they will expire.



Public Records Requests Exemptions

There are literally hundreds of exemptions that are applicable to the Public Records Law

Some of the more common ones the City deals with are:

- Social security numbers
- Personal information (home address, phone numbers, birthdate) of police, fire, code enforcement and human resources personnel and their families
- Active criminal investigation materials
- Medical information and records
- Pending Internal Investigation Records
- Security system information and plans



Recent Trend in Public Records Litigation

- Requests, sometimes burdensome, of untrained or unaware employees followed immediately by litigation seeking attorneys fees.
- Requests often test the nuances of the law, giving the municipal employee every opportunity to make a mistake, even unwilling.
 - e.g. Town of Gulf Stream
 - Beach community of 900 people and a municipal staff of 4 people
 - In less than a year the Town received 1,100 public record requests (more than Federal ATF in all of 2013).



Protecting Against Litigation

CS/CS/SB 80 (Effective 5/23/2017)

At least five (5) business days before filing suit re: denial of a public records request, the complainant must provide written notice identifying the public record to the city's custodian of public records.



Protecting Against Litigation

CS/CS/SB 80 (Effective 5/23/2017)

The complainant must not have requested the public record or brought suit for an “improper purpose.”

- Primarily to cause a violation of Chapter 119
- Frivolous purpose



Protecting Against Litigation

CS/CS/SB 80 (Effective 5/23/2017)

The local government, in order to be protected, must prominently post the contact information for the custodian of public records

- In the government's primary administrative building
- On the government's website (if it has one)



Questions???



Records Retention and Disposal



Retention and Disposal of Public Records



- The Law requires the State of Florida Division of Library and Information Services to establish retention schedules and disposal procedures for Public Records.
- Each city should have and adopted Records Management Policy and Procedure that implements the established retention schedules and disposal procedures.
- The goal is to balance the City's need to manage, store and access Public Records with the public's right to review records on timely issues related to official business.



Specific Issues Related to Maintenance, Storage, Retention and Disposal of Public Records

All records related to official business in any manner should be maintained by City staff.

- Records/documents obtained by Council members or members of appointed boards
- Notes taken by Council members or members of appointed boards
- Correspondence prepared or received by Council members or members of appointed boards
- Text messages received or sent and related to official business
- E-mail messages received or sent and related to official business



Concluding Thoughts



Best Practices

- Know who the custodian of records is
- Immediately acknowledge requests received
- Do not insist the individual identify themselves, their affiliation or their motive before fulfilling their request
- Do not insist the individual reduce the request to writing
- Charges must be reasonable and correlate to efforts expended in producing record, no flat fees or excessive charges



And if you have questions . . .

Ask Your City Attorney!



Florida Public Records Law

Elected Official Ethics Training
Florida League of Cities University





Florida Ethics Law for Public Officers and Employees

Elected Official Ethics Training
Florida League of Cities University



Three Fundamental Principles of Florida Ethics Law

- “A public office is a public trust”
- Concern that public servants avoid any situation that “tempts to dishonor”
- No one can serve two masters



The Law Declares These Principles

“A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.”

Article II, Section 8, Florida Constitution



The Law Declares These Principles

“It is essential to the proper conduct and operation of government that **public officials** be **independent** and **impartial** and that **public office not be used for private gain** other than the remuneration provided by law. The public interest, therefore, requires that the **law protect against any conflict of interest** and **establish standards** for the conduct of elected officials and government employees in situations where conflicts may exist.”

F.S. Chapter 112, Part III



The Law Declares These Principles

“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**.

...promoting the **public interest** and maintaining the **respect of the people** in their government must be of **foremost concern**.”

Chapter 112, Part III (Legislative Intent)



Where do the Rules Come From?

Categories of applicable law:

- Common Law – laws created by court decisions
- Criminal
- City Charter
- Statutory – Florida Statute Chapter 112, Part III.
“Code of Ethics for Public Officers and Employees”
- Federal Law



Statutory Subjects - Chapter 112, part III

- Solicitation or acceptance of gifts (bribes)
- Doing business with one's agency
- Unauthorized compensation (gift for influence)
- Misuse of public position
- Conflicting employment or contractual relationship
- Disclosure or use of certain information
- Voting conflicts
- Restriction on employment of relatives (nepotism)



The Underlying Principle: Preventing/Avoiding a Conflict of Interest

That is:

“a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.”



Gifts



Illegal Gifts: Anything of Value that Could Have Influence

(2) SOLICITATION OR ACCEPTANCE OF GIFTS.

No **public officer**, employee of an agency, local government attorney, or candidate for nomination or election shall **solicit or accept anything of value** to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, **based upon any understanding** that the **vote**, official **action**, or **judgment** of the public officer, employee, local government attorney, or candidate **would be influenced thereby**.



Unauthorized Compensation: Pay, Gifts or . . .

(4) UNAUTHORIZED COMPENSATION.--No **public officer**, employee of an agency, or local government attorney or his or her **spouse** or **minor child** shall, at any time, accept any compensation, payment, or **thing of value when such public officer**, employee, or local government attorney **knows**, or, with the exercise of reasonable care, **should know**, that it was **given to influence a vote or other action** in which the officer, employee, or local government attorney was expected to participate in his or her **official capacity**.



Legal and Reportable Gifts:

All of the following must be true

- It was **not given to influence** the official's action in his/her public capacity
- It **will not influence** the official's action
- It was **not given by**:
 - A **political committee**
 - A **vendor**
- **If** it was **given by a lobbyist or someone who hires a lobbyist, then**
 - It has a value of **\$100 or less**
 - It is **reported** if it has a value of **more than \$25**
- **Otherwise**, it is **reported** if over **\$100**



Solicitation of Gifts

- Basic Principle: **DON'T**
- Exception:
 - Solicitation of gifts that will not benefit the elected official, his/her immediate family, any other individual required to report gifts, and any employee involved in procurement
 - Example: soliciting donations for a charitable cause that in no way benefits any of the above individuals



Gifts and Perception

Even if a particular gift is legal, consider carefully the **public perception** of that gift



said. "I don't see this as a major issue."

3 may have erred in Disney quest

Associated Press

TALLAHASSEE — Lawmakers eager to get a free trip to see the Mouse last year may have trampled Florida laws on gifts.

At least three House members received tickets to the Magic Kingdom and Epcot center, which is legal so long as the value of the tickets doesn't exceed \$100.

The problem is they got them by calling Walt Disney World lobbyist Michelle Plante's office, the *Palm Beach Post* reported Wednesday.

"They would contact us and request a ticket," said Disney spokeswoman Diane Ledder.

Legislators cannot solicit gifts from a lobbyist or an entity that has a lobbyist in the state, said State Ethics Commission lawyer Phil Claypool. Violators can be censured, removed from office or fined \$10,000. Claypool could not say whether there is an active investigation.

Rep. Addie Greene, D-Mangonia Park, defended her right to ask for \$268 worth of Magic Kingdom tickets for her landlady and her goddaughter.

"I was put up here, and if I get some perks, I deserve those perks," she said.

Rep. Debbie Wasserman Schultz, D-Weston, said she did not solicit the \$82 worth of Epcot tickets she received.

"I didn't call to ask for the tickets because that's illegal," she said.

Rather, she was merely calling to inquire what special tours or events Disney might be planning on the days of her visit. It was during that call that Disney offered her free tickets for her visit, Wasserman Schultz said.

Rep. Bruno Barreiro, R-Miami, took advantage of Disney's generosity on two consecutive days last June. He received \$100 worth of tickets on June 28, then another \$100 worth on June 29.

He said the tickets should be seen as two legal \$100 gifts.



Reps. Addie Greene, above, Debbie Wasserman Schultz and Bruno Barreiro received free Disney tickets.



Illegal Solicitation of Tickets



Illegal Solicitation of Financial Assistance

FLORIDA NEWS

Inquiry affirms senator asked for cash

■ An investigation reveals details of state Sen. Mandy Dawson's requests to lobbyists to pay for her trip to South Africa.

By LUCY MORGAN
Times Staff Writer

TALLAHASSEE — Sen. Mandy Dawson, D-Fort Lauderdale, solicited money from 10 lobbyists to pay for a trip for her and a companion to South Africa with other lawmakers, an investigation has found. Three agreed to help.

Senate general counsel D. Stephen Kahn issued the findings Monday with no recommendation for action. But the report sheds light on the inner workings of a Legislature that often turns to lobbyists to pay for trips and gifts.

Two lobbyists and the treasurer of a political action committee

for ophthalmologists gave \$5,000 for Dawson, in apparent violation of Senate rules and ethics laws that forbid lawmakers from soliciting gifts from lobbyists and prohibit lobbyists from giving gifts valued at more than \$100.

Dawson could not be reached for comment Monday but has previously acknowledged the solicitation was "wrong and it was stupid."

The 10-day trip was organized by Enterprise Florida to see ports in South Africa and cost \$2,500 per person. Most lawmakers paid their own way, but the \$5,000 cost of sending Dawson and her companion was paid for by lobbyists.

Dawson wrote a letter on Jan. 3 soliciting money "to help defray the cost" of "a once in a lifetime opportunity." The trip included a weekend safari and visits to Cape Town, Port Elizabeth, Port Ngqura, East London, Durban, Richard's Bay, Hluhluwe and Johannesburg.

An aide questioned the possible misuse of Senate stationery,

but Kahn noted that Dawson insisted. The letter went to lobbyists Ronnie Book, Yolanda Cash Jackson, Jorge Dominicus, W. Michael Goldie, Paul W. Hamilton, Robert E. Hawken, William D. Rubin and Paul B. Sanford, and Alan Mendelsohn, treasurer of the ophthalmologists' PAC.



Sen. Mandy Dawson has said her letter "was wrong and it was stupid."

Florida Caucus of Black State Legislators "due to ethics regulations."

Senate President Tom Lee will decide whether Dawson should receive punishment, which could range from a reprimand to removal from office. A spokeswoman for

Lee said he will wait for the Rules Committee to review the report.

Book said he hesitated a few days before sending a \$1,500 check. Mendelsohn sent \$2,500, and R.J. Reynolds Tobacco Co. lobbyist Larry Williams, responding to a similar December letter from Dawson, got his client to contribute \$1,000.

Other lobbyists sent nothing.

Other legislators who made the trip were Sens. Frederica Wilson, D-Miami, and Tony Hill, D-Jacksonville, and Reps. Dorothy Bendross-Mindingall, D-Miami; Joyce Cusack, D-DeLand; Audrey Gibson, D-Jacksonville, Ed Jennings, D-Gainesville, and Frank Peterman, D-St. Petersburg.

Most of the others covered the costs with personal or district office funds. Jennings, chairman of the Black Caucus, took his mother and had the caucus pay \$4,500 of the \$5,000 fee. He repaid \$2,250 for his mother after Dawson's solicitation became public in March.

Still happening...

- Mariano Fernandez, Chief Building Official for the City of Miami Beach
 - As the building official, he has significant input on how fast or slow major projects can be completed.
 - Developer RUI had a major redevelopment project between 2013-2016.
 - It's alleged that Fernandez and five employees in his department received over 200 free nights at resorts in Miami, Mexico and the Dominican Republic.
 - His wife is a County Court Judge!
 - And, he was caught because, “[a]ccording to the arrest warrant, Fernández used his city email.”



Illegal Compensation

Ethics case proceeds against former Liberty superintendent

Florida's Commission on Ethics found probable cause that Gloria Uzzell, former Liberty County superintendent, **misused a school board credit card after spending more than \$2,000 on personal purchases, including lingerie, alcohol, hotel rooms, clothing and jewelry**, according to a press release issued by the commission Wednesday afternoon. Uzzell turned herself in at the Liberty County Sheriff's Office, and later entered into a deferred prosecution agreement with the State Attorney's Office to avoid criminal prosecution (June 2015).



Curing an Improper Gift

Pay the value of the gift to the giver within 90 days



An Outright Ban on Gifts?

- State statute allows for cities to adopt a more strict gift code
- Some cities have adopted absolute bans
- Check with your city attorney



Misuse of Public Position



Misuse of Public Position

(6) MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.



Misuse of Public Position: Don't Borrow the Car

of property

LOCAL NEWS

* TIMES ■ WEDNESDAY, APRIL 24, 2002 3B

fire chief apologizes for van, vacation missteps

... will track van
... document

KARP

... fire rescue Chief Pete
... of sorts Tuesday for his
... and for his apparent
... ment his hours while
... ai alai in Orlando.

... ar to God I'm sorry and
... Botto said in an inter-
... burg Times. "I'll make
... see a second time. I'm
... ned."

... ck Greco, his boss and
... id my butt" for his ac-

tions, which included taking a group of firefighters in a fire rescue van numerous times to Orlando to play jai alai.

"He said some things aren't exactly too bright," Botto recalled. The mayor said Tuesday he would not request a formal inquiry into Botto's transgressions.

Greco suspended Botto for a week last month after Botto admitted he had taken the van to Tennessee on a family vacation. The Times reported Tuesday that Botto never put in for those vacation hours, taking regular pay instead, a situation the mayor said he knew about and had addressed privately as part of the suspension.

Botto's work records show that his unused vacation and sick time entitle him to cash out for a lump sum of more than \$92,000, which he is eligible to receive when he retires next year. Botto, 56, is paid \$119,000 a year.

City employees, unlike those who work for the county, the School Board and Hillsborough Community College, are able to accumulate vacation time, which they can roll over into unlimited sick hours. They can cash out half of their sick hours when they retire.

There is no cap on the number of sick hours they can accrue.

Botto stopped short of admitting he had taken several days' vacation and not put in for that time, though he could not say why days off marked on his personal calendar were not documented as such with the payroll department.

"Truthfully, I don't remember those days," he said. Botto swore he would institute a new system of accountability.

"To me, it's a learning experience," said Botto, a 34-year veteran of the Fire Department and chief since 1995. "There's got to be better documentation than we've used in the past."

He declined to disclose the names of the other firefighters who had accompanied him to Orlando, saying they were all off duty.

As for using the van, the chief said that would be tracked with a log documenting the driver, the reason for use and the mileage.

"Me, personally, I'm not going to use it for sure," Botto said.

Reaction from city officials was cautious.

City Council member and mayoral candidate Bob Buckhorn said he would withhold judgment on whether Botto did anything wrong.

"There are always two sides to these things," Buckhorn said. He praised Botto as a well-liked fire chief who had boosted morale and improved the department.

City Council Chairman Charlie Miranda, who also is running for mayor, said he would look into the allegations.

"I will make comments once I know the whole story," he said.



Pete Botto said Tampa Mayor Dick Greco "chewed my butt."



Misuse of Public Position: Don't Call Home

CLEARWATER TIMES AN EDITION OF THE
St. Petersburg Times

FRIDAY ■ MAY 31, 2002

County's phone use prompts concern

From February to April 2001, county employees rang up \$6,370 on calling cards, and Commissioner Barbara Sheen made 166 personal calls in a year.

It also noted that during one three-month period, county employees made more than 10,000 calls using some type of operator assistance, at a cost of more than \$7,000.

Although Todd was not named in the audit, Spratt said she was the commissioner cited in the audit for running up "significant personal usage of the county's calling card without routine reimbursement."

Todd said most of the calls identified as personal — which the audit said were to her home or to a relative — were made to check on her constituents, a task that she considered official business.

"The vast majority of calls I make when I'm on the road were to retrieve my messages," she said. "It is my intention to return calls when I get them."

The internal audit says that during twelve months ending April 2001, the commissioner spent \$2,735 in calling card charges, of which \$896 worth were identified as personal.

The audit said Todd "was apparently unaware that



County Commission chairwoman Barbara Sheen Todd said that most of the \$896 worth of calls that the county considered personal were made to constituents, which she considered official business.

Melton said.

"All of the employees should be aware that personal-related calls should be reimbursed," said Spratt, who took over as county administrator in December 2001.

Spratt said he remembered seeing an October 2001 memo from the previous administrator reminding employees of this policy. He said his office was drafting comprehensive policies for all communication equipment issued by the county.

But that handles only county employees. Spratt said county commissioners did not fall under employee policy.

Spratt said he learned of the audit's initial findings in January and began to take corrective measures. The audit also says Todd, at the same time, sent a memo asking all commissioners to adhere to procedures issued by the county administration.

"My responsibility as a commissioner is to make

calls home were not allowable when away on county business."

Bob Melton, chief deputy director of the internal audit division, said, "Generally, calls home to relatives would be considered personal. If there are exceptions, each exception should be fully documented as to the nature of the county business to be performed."

After Todd was informed of the situation, she reimbursed the district \$1,125.54, a figure that included personal calls made through November 2001,

Please see **PHONE** Page 2



Misuse of Public Office: Examples

- An elected official asking to 'talk to the sheriff' when pulled over for suspected DUI
- An elected official showing an ID or badge to avoid a traffic ticket
- A Supervisor of Elections included her campaign material in the same envelopes as absentee ballot applications
- A sheriff used staff as labor, and county equipment, to harvest his watermelon crops and transport them to market
- A council member using city computers to print campaign materials



Conflicts Related to Employment



Doing Business with One's Agency

(3) DOING BUSINESS WITH ONE'S AGENCY.--No employee of an agency acting in his or her official capacity as a purchasing agent, or **public officer** acting in his or her **official capacity**, shall either directly or indirectly **purchase, rent, or lease** any **realty, goods, or services for his or her own agency from any business entity** of which the **officer** or employee or the officer's or employee's **spouse or child is an officer, partner, director, or proprietor** or in which such officer or employee or the officer's or employee's spouse or child, or any **combination** of them, has a **material interest**.



Doing Business with One's Agency

Nor shall a public **officer** or employee, acting in a **private capacity**, rent, lease, or sell any realty, goods, or services **to the officer's** or employee's own **agency**, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall **not** affect or be construed to **prohibit contracts** entered into **prior** to: . . .

- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.



Doing Business with One's Agency: Don't Push the Contract

Pushed
forward
contract for
husband's
company
for a break
on fees

9/13/2015

Stephanie Kraft guilty of official misconduct, jailed in Broward - Sun Sentinel

Former School Board member Kraft jailed following guilty verdict

By Rafael Olmeda
Sun Sentinel

DECEMBER 11, 2014, 6:22 PM

A School Board member representing northwest Broward County from 1998 until 2010, Kraft was bounced from her job when prosecutors accused her of helping a father-son development team that had hired her husband on a controversial housing project in Tamarac.

The accusations were leveled by the developers, Bruce and Shawn Chait, who testified against her and also brought accusations against four other elected officials. The Chaits pleaded guilty in 2010 to unlawful compensation charges. Both served probation terms, with Shawn Chait, the son, expected to emerge without a criminal record as long as he continues cooperating with prosecutors and stays out of trouble with the law.

According to trial testimony, the Chaits hired Mitchell Kraft as a consultant on their housing development — knowing he was married to Stephanie Kraft and hoping she could help them win a \$500,000 break on fees they would have to pay to the school district.

Testimony and documents revealed that Kraft succeeded in getting the item on a July 2007 School Board agenda, over the objection of staff members who said the project had not gone through the proper vetting procedure for approval.



Conflicting Employment or Contractual Relationship

(a) No **public officer** or employee of an agency shall have or **hold any employment or contractual relationship** with any business **entity** or any agency which is subject to the **regulation** of, or is **doing business with**, an **agency** of which **he or she is an officer or employee**, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a **collective bargaining contract** with the state or any municipality, county, or other political subdivision of the state;



Conflicting Employment or Contractual Relationship

nor shall an officer or employee of an agency **have** or hold any **employment or contractual relationship that will create a continuing or frequently recurring conflict between** his or her **private interests** and the **performance** of his or her **public duties** or that would **impede** the **full and faithful discharge** of his or her **public duties**.



Conflicting Employment or Contractual Relationship

- Tests:
 - Frequently recurring conflict
 - Impede full and faithful discharge of public duties



Conflicting Employment or Contractual Relationship

May yield harsh result...
choice between public office
and private employment.



Conflicts Related to Employment: General Exemptions

- Rotation system
- Competitive bidding (must meet certain criteria and filings)
- Legal advertising, utilities service, passage on a common carrier
- Emergency purchase or contract
- Sole source within city after disclosure
- Not exceed \$500 per calendar year
- Banks...without favor
- Private purchase at terms available to public



Conflicts Related to Employment: Exemptions

Advisory board members may hold conflicting employment and serve if, after full disclosure, the conflict is waived by a 2/3 vote of the appointing body



Restriction on Employment of Relatives

(2)(a) A **public official** may **not appoint, employ, promote, or advance, or advocate** for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a **relative of the public official**. **An individual may not be appointed, employed, promoted, or advanced** in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a **collegial body** of which a relative of the individual is a member.



Restriction on Employment of Relatives

- Relative is defined as: an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
- This does not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population.
- Mere approval of budgets shall not be sufficient to constitute “jurisdiction or control” for the purposes of this prohibition.



Disclosure or Use of Information



Disclosure or Use of Certain Information

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.--A **current** or **former** public officer, employee of an agency, or local government attorney may **not disclose or use information not available to members of the general public and gained** by reason of his or her official **position**, except for information relating exclusively to governmental practices, for his or her **personal gain or benefit** or for the personal gain or benefit of any **other person** or **business entity**.



Voting Conflicts



Voting Conflicts

(3)(a) No county, **municipal**, or other local public officer shall **vote** in an official capacity upon any measure which would **inure to his or her special private gain or loss**; which he or she 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, other than an agency as defined in s. [112.312\(2\)](#); 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.



What is a Voting Conflict?

A measure which would:

- inure to the official's special private gain or loss;
- which he or she 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.



What is a Voting Conflict?

- “Special private gain or loss” means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal.
- “Relative” means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law



Voting Conflicts: Other Tests

If no 'special and private' benefit or harm, but there is benefit/harm:

- **Size of the class test**
 - Does the official's interest amount to 1% or more of the class to be benefitted/harmed?
- **Remote and speculative test**
 - Is the alleged benefit/harm substantially removed from the specific act and very uncertain?



Voting Conflicts

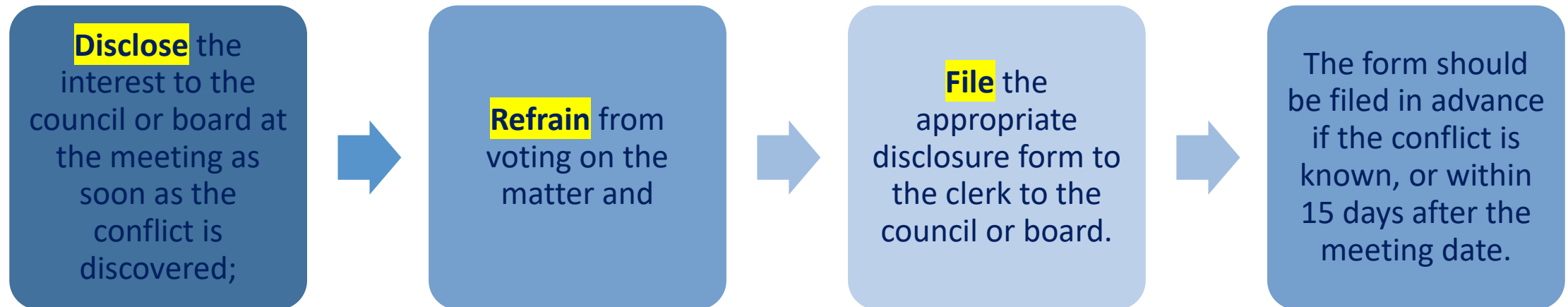
If an official believes he/she has a conflict:

- Discuss it in private with the city attorney
- If the attorney determines that no voting conflict exists (in law):
 - Have the attorney put that determination in writing
 - Ask the attorney, at the time of the public meeting, to put on the record his/her finding



Voting Conflicts

If an official has a conflict:



Voting Conflicts

- A tough vote, or an uncomfortable one, does not constitute a voting conflict
- Under Florida law, elected municipal officials have an ***obligation*** to vote on all matters that come before their board, unless there is a conflict of interest in law



A Quick Check List



Ask Yourself . . .

- Am I acting in the **interest of the public**, which has entrusted me with the **duties** of this office?
- Is the situation one in which an observer might think that I am **tempted** to do something that is **dishonorable**?
- Is there a **potential conflict** between two competing demands on my allegiance?
- What will this look like as a **headline**, and am I comfortable with that headline?



Then . . .

Ask Your City Attorney!



Florida Ethics Law for Public Officers and Employees

Elected Official Ethics Training
Florida League of Cities University

