

Florida Commission on Ethics

CEO 11-23 – December 7, 2011

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CONFLICT OF INTEREST; VOTING CONFLICT

SCHOOL DISTRICT BOARD MEMBER, SUPERINTENDENT, ADMINISTRATOR OR OTHER EMPLOYEE SERVING ON GOVERNING BOARD OF CHARTER SCHOOL SPONSORED BY SCHOOL DISTRICT

To: *Benjamin J. Williams, School Board Chair, and Robert W. Runcie, Superintendent
(District School Board of Broward County)*

SUMMARY:

A prohibited conflict of interest would not be created under either Section 112.313(3) or Section 112.313(7)(a), Florida Statutes, were district school board officers or employees also to serve as uncompensated members of the board of directors of a charter school applying to and sponsored by the district school board, where the school board submits the application to itself for the charter school. Such a situation presents a unity of interest justifying the application of Section 112.316, Florida Statutes, to negate a rote application of the statutes. And, no voting conflict would be created under Section 112.3143(3)(a), Florida Statutes, for the district board members regarding measures/votes of the district board concerning the charter schools. Also, neither a prohibited conflict nor a voting conflict would be created for the officers or employees, in their capacity as governing board members of the charter school, pursuant to Section 1002.33(26)(a), Florida Statutes. CEOs [81-5](#), [81-40](#), [90-24](#), [06-26](#), [07-11](#), and [10-2](#) are referenced, and CEO [97-7](#) is distinguished.¹

QUESTION 1:

Would a prohibited conflict of interest be created were a member of a district school board also to serve as an uncompensated member of the governing board of a charter school sponsored by the district school board, where the school board is the applicant to itself for the charter school?

This question is answered in the negative.

By your letter of inquiry, you relate that the District School Board of Broward County receives charter school applications by August 1 of each year from parties seeking to operate a charter school in the Broward School District for the following year, and beyond. Further, you state that District administrators and employees from various departments review each application to determine its sufficiency and assist the District Superintendent of Schools in developing a recommendation as to whether to approve or deny the application. Additionally, you relate that the Superintendent's recommendation then is placed on the School Board's agenda for a vote and, if the vote is favorable, a proposed charter school agreement between the applicant and the District is negotiated by District administrators and representatives of the approved charter school. Also, you state that the proposed agreement then is recommended to the School Board by the Superintendent, with the Board voting upon approval of the agreement, and that a similar process occurs for any amendment to such an agreement. Further, you relate that each approved charter school is funded under Section 1002.33(17), Florida Statutes, and that a charter school's funds are distributed to it through the District School Board.

Additionally, you state that the responsibilities of the District School Board, under Section 1002.33, Florida Statutes, as the sponsor of a charter school, include:

- Determining whether to approve or deny each charter school application.
- Approving a charter school agreement with each charter school.
- Monitoring and reviewing each charter school in its progress toward the goals established in the charter.
- Monitoring the revenues and expenditures of the charter school and performing the duties provided in Section 1002.345, Florida Statutes.
- Ensuring that the charter school is innovative and consistent with the State education goals established by Section 1000.03(5), Florida Statutes.
- Ensuring that the charter school participates in the State's education accountability system and reporting any performance shortcomings to the Florida Department of Education.
- Determining whether to share with charter schools any capital outlay funds derived through Section 1011.71(2), Florida Statutes.
- Determining whether to renew or terminate the charter school agreement of each approved charter school.

You relate that the Superintendent's responsibilities include:

- Determining whether to recommend approval or denial of each charter school application.
- Determining whether to recommend approval of a charter school agreement with each charter school.
- Determining whether to recommend the renewal or termination of the charter school agreement of each approved charter school.
- Monitoring and reviewing each charter school in its progress toward the goals established in the charter.
- Monitoring the revenues and expenditures of the charter school and performing the duties provided in Section 1002.345.
- Ensuring that the charter school is innovative and consistent with the State education goals established by Section 1000.03(5).
- Ensuring that the charter school participates in the State's education accountability system and recommending whether to report any performance shortcomings to the Florida Department of Education.
- Determining whether to recommend sharing with charter schools any capital outlay funds derived through Section 1011.71(2).

You state that the rights and responsibilities of the governing board of a charter school include:

- The ability to appeal the denial of its charter school application (where applicable) to the State Board of Education.
- Negotiation and approval of a charter school agreement with the District School Board.
- Initiation of mediation services through the Florida Department of Education for any dispute with the District School Board, other than denial of a charter school application.
- The ability to appeal to the Florida Division of Administrative Hearings any dispute with the District School Board not settled by mediation (with the prevailing party to receive reasonable attorney fees and costs).
- Providing continuing oversight over charter school operations.
- Negotiating terms and costs for goods, services, and transportation to be provided to the charter school by the District School Board.

Further, you state that at this time, the District School Board is considering whether to submit one or more applications to itself, for the operation of a new charter school or a conversion charter school,² to be located in Broward County. You relate that in this scenario, the District School Board would be both the applicant and the sponsor of the charter school(s).³ Additionally, you state that the District School Board is contemplating, regarding such applications, that the governing board for the charter school would include one or more of the District School Board members, and/or the Superintendent, and/or one or more of the District's administrators or employees. However, you emphasize that no compensation would be paid for service on the governing board of such a charter school, regardless of whether the governing board member is or is not an officer or employee of the School District. And, you relate that once a charter application is approved for such a school, the

District School Board would enter into a charter school agreement with the governing board of the charter school.⁴

Prohibitions within the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes) relevant to your inquiry are Sections 112.313(3) and 112.313(7)(a), Florida Statutes, which provide, respectively:

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. 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:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 . . . ; 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.

In CEO [97-7](#), we found that a prohibited conflict of interest would be created under Section 112.313(3), were a district school board employee to serve without compensation on the board of directors of a proposed charter school seeking approval of its application from the district school board. Therein, we reasoned that, although the district employee would not be acting in a public capacity as a purchasing agent to purchase services from the charter school for the district in violation of the first part of Section 112.313(3), the employee would be acting in a private capacity under the second part of the statute to sell the services to the district.⁵ Also, in CEO [97-7](#), we declined to find a "unity of interest" which would have negated the conflict under Section 112.316, Florida Statutes, which provides:

CONSTRUCTION.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

In the instant situation, too, we find that the District School Board member, as a director of the charter school, would be acting in a private capacity to sell the services of the charter school to the

School District.⁶ However, unlike CEO [97-7](#), in the instant situation we find that a "unity of interest" would exist, which would negate a literal or mechanical application of the prohibition, via application of Section 112.316, Florida Statutes.

In previous opinions, we have found such a unity when: (1)the individual public officer or employee who also is serving in an additional capacity does not stand to benefit privately from his or her additional service, (2)the individual is appointed to the organization's board because of his or her public position, and (3)the organization was created for the benefit of the individual's public agency. See, for example, CEO [81-40](#) (school board member serving as trustee of Florida school boards association insurance trust), CEO [06-26](#) (county tax collectors serving as uncompensated directors of tax collectors association's service corporation), and CEO [07-11](#) (school board member, tax-exempt education foundation).⁷ In CEO [97-7](#), we found that "elements" (2) and (3) were not met. However, the instant situation appears to mirror these requirements. Here the District School Board will have created the charter school corporation for its benefit and the benefit of its students to serve in educating students within the District ("element 3"), and the Board member would have been appointed to the charter school governing board because of his District position ("element 2"). Thus, we distinguish CEO [97-7](#) from the instant situation. Further, we find it important, regarding such a unity, that it is the mission of a public school district to educate students within the district, via traditional public schools and via the various modifications or alternatives available under Section 1002.33, Florida Statutes.

Concerning Section 112.313(7)(a), in CEO [97-7](#) we found that a district school board regulates charter schools and does business with them. Regarding the instant situation, we make the same finding; such dynamics are obvious from the responsibilities and rights of the District School Board and charter schools, as listed above. In CEO [97-7](#) we did not find a prohibited conflict of interest, based on the school board employee's charter school position being uncompensated, coupled with our view that service as an uncompensated director does not by itself constitute employment or a contractual relationship, another required element for a prohibited conflict under Section 112.313(7)(a). Similarly, we find here that the uncompensated service does not create a prohibited employment or contractual relationship. Rather, we emphasize that the proposed situation would involve a unity of interest. See, for example, CEO [81-5](#) (school board member employed as supervisor of regional diagnostic and learning resource center), in which we found such a unity "arising from a common goal of better education for exceptional students."

Question 1 is answered accordingly.

QUESTION 2:

Would a prohibited conflict of interest be created were a district school superintendent also to serve as a member of the governing board of a charter school sponsored by the district school board, where the school board is the applicant to itself for the charter school?

This question is answered in the negative.

As with the District School Board member in Question 1, we find that the Superintendent's dual service would present a unity of interest rather than a conflict of interest.

Question 2 is answered accordingly.

QUESTION 3:

Would a prohibited conflict of interest be created were an administrator or other employee of a district school board also to serve as a member of the governing board of a charter school sponsored by the district school board, where the school board is the applicant to itself for the charter school?

Under our reasoning of Questions 1 and 2, Question 3 is answered in the negative.

Your questions are answered accordingly.⁸

ORDERED by the State of Florida Commission on Ethics meeting in public session on December 2, 2011 and **RENDERED** this 7th day of December, 2011.

Robert J. Sniffen, *Chairman*

^[1]Prior opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us).

^[2]Section 1002.33(1), Florida Statutes, provides that ". . . [a] charter school may be formed by creating a new school or converting an existing public school to charter status"

^[3]You represent that "[t]his scenario appears to be permissible under current law" It is not within our jurisdiction to opine as to whether, as a matter of substantive law, Section 1002.33 contemplates that a district school board can be both the applicant/operator and the sponsor regarding a charter school. Our role is limited to determining whether such a situation would create a prohibited conflict of interest for public officers or employees serving both the District School Board and the charter schools(s) which would be created by the District School Board.

^[4]Structurally, your inquiry contemplates that the charter school would be organized and operated as a nonprofit corporation.

^[5]Our finding in CEO [97-7](#) that the charter school would be selling services to the school district was based on the district providing the funding for the charter school, and the charter school then, in turn, educating a segment of the district's student population. We can discern no difference in this regard between the situation of CEO [97-7](#) and that of the instant inquiry.

^[6]We also find that the District Board member would meet the elements under the first part of Section 112.313(3). Unlike public employees (e.g., the school district employee in CEO [97-7](#)), who must act as a "purchasing agent" as defined in Section 112.312(20), Florida Statutes, in order to meet the elements of the first part, a public officer (e.g., a District School Board member) "acts in his or her official capacity" under the first part when the public agency board of which he or she is a member acts. CEO [90-24](#).

^[7]Regarding the voting conflicts law portion of the Code of Ethics applicable to local, elective public officers, such as District School Board members, we find that the members would not be presented with a voting conflict regarding measures/votes of the Board concerning a proposed charter school or an approved charter school. As uncompensated position holders with the charter school, they would not be "retained," and retention is an essential element of the voting conflicts law. CEO [10-2](#).

^[8]We also find that the District School Board officers or personnel who would serve on the board of a charter school, where the Board is both the applicant and the sponsor, would not have a prohibited conflict pursuant to Section 1002.33(26)(a), Florida Statutes, which provides that "[a] member of a governing board of a charter school, including a charter school operated by a private entity, is subject to ss. 112.313(2), (3), (7), and (12) and 112.3143(3)." We find that such a situation necessarily embodies the same overriding unity of interest found above, even if it does not meet the "numbered element" for such a unity which would have required that the District School Board have been created to serve the interests of the charter school. Further, we find no voting/participation conflict for the charter school governing board members under Section 112.3143, regarding measures/votes of the charter school board which affect their public employer or agency (the School Board/District) and which also do not affect them in a private capacity or others connected to them, as listed in Section 112.3143, in a private capacity; Section 112.3143 does not encompass gain or loss to a public entity (e.g., a public school board/district) and Section 112.3143(3)(a) specifically exempts measures/votes affecting one's employer when the employer is a public "agency" as defined in Section 112.312(2), Florida Statutes.