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"A Public Office is a Public Trust"

November 10, 2021

Ms. Caretia Wright
Teen Counselor & Maintenance
Parks & Recreation Division
City of Fort Lauderdale
famugrad4u@aol.com

Re: Your inquiry received via email

Dear Ms. Wright:

This letter is the response to your above-referenced inquiry concerning conflicts of interest, if any, arising under the Code of Ethics for Public Officers and Employees (Code of Ethics) regarding your continued public employment as a Teen Counselor & Maintenance worker with the City of Fort Lauderdale's (City) Parks and Recreation division and your private capacity application for, and receipt of, a Community Development Block Grant (CDBG) from the City. You state that your public capacity employment responsibilities include interacting with and mentoring teen groups in a variety of activities held on public park property as well as maintaining park trails, tables, and buildings in good order. You state that as a Teen Counselor and Maintenance worker you do not have any public capacity responsibilities or involvement in the City's reviewing, processing, or otherwise evaluating CDBG requests and/or eligibility nor do you have any public capacity responsibilities or authority regarding the City's oversight of existing grants. You relate that in your private capacity you are an owner and resident of a home located within the City. You state that in your capacity as a homeowner you have applied for a CDBG grant with the City which you would like to use for the benefit of your private residence.

The portions of the Code of Ethics relevant¹ to your inquiry include Sections 112.313(3) and 112.313(7)(a), Florida Statutes, which provide:

¹ This response analyzes applicable provisions of the Code of Ethics and does not address any additional restrictions or requirements unique to the Requestor's profession, occupation, or agency, if any.

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. [Section 112.313(3), Florida Statutes]

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. [Section 112.313(7)(a), Florida Statutes.]

Section 112.313(3) contains two prohibitions, the first of which prohibits public officers and certain public employees from directly or indirectly purchasing, renting, or leasing realty, goods, or services for the person's own agency from a business entity of which the person or the person's spouse or child is an officer, partner, director, proprietor, or the owner of a "material interest" in the entity. Moreover, the second part of Section 112.313(3) prohibits public officers or employees from acting in a private capacity to rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency. See CEO 08-4, CEO 15-14, and CEO 19-14. In the instant matter there are no facts present which indicate that you are seeking in your public capacity as a purchasing agent to buy any realty, goods, or services from any entity for your agency, the City. Moreover, there are no facts present which indicate that you or a business entity in which you serve in a leadership capacity, or in which you own a material interest, is seeking to sell any realty, goods, or services to the City. Thus, apparently neither the first nor the second part of Section 112.313(3), Florida Statutes, are implicated by the facts contained herein.

Section 112.313(7)(a), Florida Statutes, has two parts. The first part prohibits a public officer or employee from having or holding employment or a contractual relationship with an agency or with a business entity if the agency or entity is subject to the regulation of, or is doing business with, the employee's public agency. The Commission has found that the "agency" of an public officer or employee does not necessarily include the entire political subdivision of the officer or employee, but rather refers to the lowest departmental unit within which a public officer's or employee's influence might reasonably be considered to extend. CEO 93-31, CEO 99-7 and CEO 14-28. In light of your factual representations regarding your public employment responsibilities as a Teen Counselor and Maintenance worker with the City's Parks and Recreation division, it appears that your "agency" for the purposes of Section 112.313(7)(a) is the Parks and Recreation division of the City. The second part of Section 112.313(7)(a) prohibits a public officer or employee from having a contractual relationship which would create a continuing or frequently recurring conflict between your private interests and the performance of your public duties or which would impede the full and faithful discharge of your public duties.

Although no information was provided in response to the portion of a Request for Additional Information which inquired, in part, regarding the division or node of the City that oversees and approves CDGB grants and sought a description of the responsibilities that a grant recipient homeowner has to the City pursuant to the receipt of a CDGB grant, it appears from public records reviewed in conjunction with the instant analysis that the City's CDGB grant program is overseen and administered by the City's Housing and Community Development (HDC) Division. Public records indicate that the HDC administers and coordinates programs for affordable housing, community development, public service initiatives, and small business assistance that targets and benefits low- and moderate-income residents. The HCD website further indicates that it is the primary custodian of approximately \$10M - \$12M annually in Federal and State funding, including funding provided as part of the CDGB grants.

Although information regarding the CDGB grant requirements has not been provided as part of this analysis, it is possible that such a grant could constitute a contractual relationship between you (as the homeowner/recipient) and the HDC. See CEO 08-4, CEO 15-14, and CEO 19-14. As your "agency" for the purposes of Section 112.313(7)(a) apparently is the City's Parks and Recreation Division, and not the HDC, it is questionable that a contract formed between you and the HDC would trigger the prohibitions within the first or second clause of the Section 112.313(7)(a). However, assuming arguendo that such a contractual relationship could be implicative of the prohibitions contained in Section 112.313(7)(a), Florida Statutes, we note that the Legislature has provided a limited exemption to provisions of the Code of Ethics by enacting Section 112.316, Florida Statutes. That Section 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.

This provision requires that the Code of Ethics not be interpreted to preclude private employment or any other pursuit which does not interfere with the full and faithful discharge of a public employee's duties. The Commission has found in advisory opinions that public employees whose public responsibilities were unrelated to their private pursuits could retain their outside endeavors without violating the Code of Ethics. See CEO 19-14. For example, in CEO 19-14, the Commission analyzed whether a City employee's participation in a Home Purchase Assistance Program administered by the City's Community Redevelopment Agency (CRA) created a prohibited conflict of interest for the employee and found that the application of Section 112.316, Florida Statutes, was appropriate to negate the conflict as the public employee's position did not have any involvement with reviewing, processing, or otherwise evaluating any CRA grant applications or monitoring their compliance with the program. Similarly, in the instant matter, you relate that your public employment as a Teen Counselor and Maintenance worker with the City's Parks and Recreation division does not involve any responsibilities with the City's HDC division. Further, you relate that as a Teen Counselor and Maintenance worker you do not have any public capacity responsibilities or involvement in the City's reviewing, processing, or otherwise evaluating CDBG requests and/or eligibility nor do you have any public capacity responsibilities or authority regarding the City's oversight of existing grants. Therefore, it is apparently appropriate under the circumstances set forth herein to apply Section 112.316 to negate the possible conflict of interest, to the extent that one exists, under Section 112.313(7)(a), Florida Statutes.

In summary, and in light of your current public employment position wherein you do not possess any public capacity authority regarding the City's reviewing, processing, or otherwise evaluating CDBG requests, eligibility, or compliance, you are apparently not prohibited by either Section 112.313(3) or 112.313(7)(a) from continuing to maintain your public employment with the City's Parks and Recreation division while receiving a CDBG grant. The referenced statutes and advisory opinions are available on our website at www.ethics.state.fl.us. If any of the material facts of your inquiry are other than as stated herein, please let me know; and if you have any additional questions, feel free to contact me.

Sincerely,

Caroline Klancke

Caroline Klancke
General Counsel & Deputy Executive Director
Florida Commission on Ethics