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"A Public Office is a Public Trust"

December 18, 2013

Felicia M. Brunson
4040 SW 27th Street
West Park, Florida 33023

Re: Commission on Ethics Opinion No. 13-22

Dear Ms. Brunson:

Enclosed is the advisory opinion from the Commission on Ethics which you have requested. This opinion, until amended or revoked, is binding on the conduct of the officer, employee, or candidate who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion. [Section 112.322(3)(b), Florida Statutes]

This opinion is a final action by the Commission on Ethics and is subject to review in a District Court of Appeal upon the petition of the person(s) against whom an adverse opinion is given. [Section 112.3241, Florida Statutes] Review may be sought by filing a notice of administrative appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Commission and filing a copy of the notice (attaching a conformed copy of the opinion) and a filing fee with the District Court, within 30 days from the date the opinion was rendered.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Virlindia Doss
Executive Director

Enclosure

CONFLICT OF INTEREST; VOTING CONFLICT

SCHOOL BOARD MEMBER EMPLOYED BY FLORIDA VIRTUAL SCHOOL

To: *Felicia M. Brunson, West Park*

SUMMARY:

Section 112.313(7)(a), Florida Statutes, would not prohibit a district school board member from employment with the Florida Virtual School, a statewide school district, and Section 112.3143(3)(a), Florida Statutes, would not prohibit the member from participating in votes/measures concerning the Florida Virtual School. CEO 94-83 and CEO 95-23 are referenced.¹

QUESTION:

Would a prohibited conflict of interest or voting conflict be created if a district school board member were to be employed by a statewide public school district known as the Florida Virtual School?

Under the circumstances presented, your question is answered in the negative.

In your letter and a subsequent email, you state that you are employed by the Florida Virtual School (FLVS), a State of Florida online public school district, as a district relations manager working with the Miami-Dade School District, and in that position you have the following responsibilities:

- Working directly with the Miami-Dade School District and Miami-Dade school-level personnel to assess District needs, design and deliver virtual education solutions, and ensure student enrollment;
- Assisting the Miami-Dade School District in meeting virtual education requirements set forth in Florida Statutes; and
- Serving as lead public relations representative for FLVS in Miami-Dade County, which includes developing a Miami-Dade County marketing plan for FLVS, coordinating and attending community events in Miami-Dade County to promote FLVS, and training staff in FLVS messaging.

You state that you have filed papers to qualify as a candidate for the Broward County School Board and that, if you were to be elected, you might be called upon to vote on measures

¹Opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us).

concerning use of FLVS programs in the Broward County School District. You state that your FLVS position working with the Miami-Dade School District has no connection or overlap with FLVS in Broward County or to the statutory franchise agreement between FLVS and the Broward County School District. You explain that measures concerning FLVS programs typically come before the Broward County School Board once each year, during a period when courses are being scheduled. You ask what, if any, Code of Ethics restrictions would apply if you were to succeed in the 2014 election and become a School Board member while continuing in your position with FLVS.

Your scenario implicates Section 112.313(7)(a), Florida Statutes, and Section 112.3143(3)(a), Florida Statutes. Section 112.313(7)(a), Florida Statutes, states:

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.

The first part of this provision would prohibit you from having any employment or contractual relationship with a business entity or agency that is regulated by or is doing business with your agency. Your public agency, for purposes of this provision of the Code of Ethics, would be the Broward County School District, if you were elected to serve as a member, and your employment would be your position with FLVS.² Since FLVS is your employer, the first part of Section 112.313(7)(a) would apply if the School Board regulates FLVS or if a contract between the School Board/District and FLVS constitutes "doing business."

However, the School Board apparently has no regulatory authority over FLVS, a statewide school district. And, although the School Board/District is a party to a franchise agreement (contract) with FLVS, we have found that intergovernmental agreements generally do not constitute "doing business." CEO 95-23. Therefore, we find that your holding both positions would not create a prohibited conflict under the first part of Section 112.313(7)(a), Florida Statutes.

The second part of Section 112.313(7)(a) prohibits any employment or contractual relationship that would give rise to an actual conflict of interest. Thus, the relevant issue would be whether your FLVS employment would create a continuing or frequently recurring conflict or would impede the full and faithful discharge of your duties as a Board member.

You state that your responsibilities in the two positions would not overlap since your FLVS employment relates strictly to the Miami-Dade School District and that any Broward District School Board measures related to FLVS would concern only the FLVS programs in Broward

²Your position on the School Board, since it would be the holding of an office, would not constitute employment or a contractual relationship. CEO 95-23.

County, which would, as you state, arise only infrequently in the context of yearly course scheduling. Thus, we do not find that you would have a conflict of interest under the second part of Section 112.313(7)(a) were you to hold both positions.³

Also implicated in your scenario is Section 112.3143(3)(a), Florida Statutes, which provides:

VOTING CONFLICTS.—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. [Emphasis added.]

Section 112.3143(3)(a) comes into play in situations in which the vote/measure would cause special private gain or loss to the voting officer, personally, the officer's principal (e.g., employer), the officer's relative, or certain other persons or entities listed in the statute. The scenario you present contains no indication that measures which would come before the School Board related to FLVS would create any special private gain or loss to you, personally, or to anyone related or connected to you. And, although such measures potentially could inure to the special private gain or loss of FLVS, your principal (employer), FLVS fits the definition of "agency" in Section 112.312(2), Florida Statutes,⁴ which would constitute an exception to the voting conflicts law.⁵ Therefore, we

³Your scenario apparently would not implicate the dual office-holding prohibition, Article II, Section 5(a), Florida Constitution, which is administered by the Office of the Attorney General, and not the Commission on Ethics. Although as a School Board member you would be considered a "county officer" (CEO 94-83), your position with FLVS is classified as an "employment" rather than an "office." State ex rel. Holloway v. Sheats, 83 So. 508 (Fla. 1919). However, you should contact the Office of the Attorney General for definitive guidance as to applicability, if any, of Article II, Section 5(a), and also as to applicability, if any, of Section 1001.42(12)(i), Florida Statutes, which prohibits school districts from contracting for materials, supplies, or services with district school board members or with business organizations in which district school board members have financial interests, to your situation.

⁴"Agency" is defined in Section 112.312(2) as "any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative." The Florida Virtual School is a statewide school district, and, therefore, an agency, as provided in Section 1002.37, Florida Statutes, which states:

The Florida Virtual School shall be governed by a board of trustees comprised of seven members appointed by the Governor to 4-year staggered terms. The board of trustees shall be a public agency . . . and board members shall be public officers who shall bear fiduciary responsibility for the Florida Virtual School. [Emphasis

find that you would not be presented with a voting conflict regarding School Board measures concerning FLVS.⁶

Accordingly, we find that your employment with FLVS would not be prohibited by the Code of Ethics if you were serving as a member of the Broward District School Board and that you would not be required, as a Board member, to abstain from voting on measures concerning FLVS.

Your inquiry is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on December 13, 2013, and **RENDERED** this 18th day of December, 2013.


Morgan R. Bentley, *Chairman*

added.]

⁵"Principal by whom retained" is defined in Section 112.3143(1)(a) as ". . . an individual or entity, other than an agency, as defined in s. 112.312(2)." [Emphasis added.]

⁶Section 112.3125(2), Florida Statutes (Dual public employment), would not apply to your situation even though you are a candidate for elected office (and, potentially, an office holder), because you state that your public employment with FLVS commenced prior to your candidacy for public office.