EXECUTIVE BRANCH EXPENDITURES AND GIFTS FROM LOBBYISTS OR THEIR PRINCIPALS

PRINCIPAL OF LOBBYIST OF REPORTING INDIVIDUAL'S AGENCY PROVIDING PUBLIC SERVICE ANNOUNCEMENTS IN WHICH REPORTING INDIVIDUAL APPEARS

To: Ronald G. Meyer, Esquire (Tallahassee)

SUMMARY:

The expenditure restriction of Section 112.3215(6)(a), Florida Statutes, applies to prohibit a principal of a lobbyist of the executive branch of state government from providing public service announcements in which state agency officers or employees who file financial disclosure would appear. CEO 05-11, CEO 06-17, CEO 08-2, and CEO 12-16 are referenced.¹

QUESTION:

Does the expenditure restriction of Section 112.3215(6)(a), Florida Statutes, prohibit the principal of an executive branch lobbyist of state government from providing a public service announcement in which a reporting individual² appears?

Your question is answered in the affirmative.

You write that you make inquiry in behalf of a connectivity company³ that provides

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

² For purposes of this opinion, "reporting individual" and "agency official or employee" have the same meaning.

³ Charter Communications, under the brand name Spectrum.
broadband, video, mobile, and voice services to many customers in many states, including Florida; and that the company is a principal of Florida executive branch lobbyists and Florida legislative branch lobbyists. The company wishes to provide time, on its communications networks, to disseminate public service announcements concerning the coronavirus pandemic. The company envisions announcements in which officials, such as the Governor, Lieutenant Governor, Surgeon General, Commissioner of Education, and other officials would appear.

Pertinent to your inquiry is the prohibition of Section 112.3215(6)(a), Florida Statutes, which provides:

Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure.

We find that the company's airing on its networks of public service announcements in which a public official who files financial disclosure appears is prohibited by Section 112.3215(6)(a), as such would constitute an "expenditure." Our decisional history as to this dynamic extends nearly fifteen years; and our decisions never have been grounded in any perceived merit or lack of merit as to the content or purpose of such an announcement. Rather, our decisions have focused on the

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4 For the purposes of Section 112.3215(6)(a), "agency official" and "employee" are defined to mean "any individual who is required by law to file full or limited public disclosure of his or her financial interests"; and "agency" is limited to state-level entities or officers. See Sections 112.3215(1)(b) and 112.3215(1)(a), Florida Statutes. An agency official or employee includes the Governor, the Lieutenant Governor, and various other persons who are either "state officers" or "specified state employees" as defined in Section 112.3145(1)(c) and Section 112.3145(1)(b), Florida Statutes.

5 "Expenditure" is defined in Section 112.3215(1)(d), Florida Statutes, to mean "... a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying ...." "Lobbies" includes seeking to obtain the goodwill of an agency official or employee; see Section 112.3215(1)(f), Florida Statutes.

6 Our decisions concern the expenditure restriction of Section 112.3215(6)(a), Florida Statutes, and the gifts law of Section 112.3148, Florida Statutes. Unlike giving/acceptance prohibitions of
influence that persons or entities interested in official decisionmaking (i.e., lobbyists and their principals) of public agencies and their officers could gain by providing free exposure and publicity to the official.

In CEO 05-11, we found that the appearance of members of the Legislature in public service announcements for the Lifeline and Link-Up programs (clearly good and apparently effective programs to connect and maintain telephone service for low-income households) were within the ambit of the gifts law, stating that "[w]hile the advertising is clearly 'on behalf of' the Lifeline and Link-Up programs, it clearly is made available 'on behalf of' the official serving as spokesperson as well." In CEO 08-2 (Attorney General appearing in public service announcements), we found that neither the gifts law nor the expenditure restriction would be violated were the Attorney General to appear in public service announcements promoting a Florida conference for women (certainly, also a very worth endeavor) spearheaded by the Florida Commission on the Status of Women; however, there, the lack of applicability of either prohibition was grounded in the fact that the gift or expenditure to the Attorney General did not come from a lobbyist, principal of a lobbyist, or other prohibited donor. By contrast, in your instant inquiry, the company that would provide the announcements in which the official would appear admittedly is the principal of a lobbyist. Similarly, we applied the gifts law to a city commissioner appearing in public service announcements promoting an anti-littering campaign (again, a worthy purpose, and one going to public health and sanitation). CEO 12-16 (Governor's recorded greetings played on airport shuttle buses) is distinguishable from the instant inquiry in that its finding of a lack of a prohibited expenditure is grounded in the logic of one receiving something of value from an organization in which he or she holds a leadership capacity; and the Governor or other public officials whom the company would have in the announcements in the instant matter are not officers or directors of the company.

the gifts law, which require a gift to have a greater than $100 value, a prohibited expenditure has no such threshold and has been found in situations of nominal value; see CEO 06-17 (executive branch lobbying: promotional items given away by insurance provider to state employees attending benefit fairs).
We have not overlooked that your inquiry requests that, in spite of our decisional history, we should recede from our precedent, as an expediency under the current crisis. However, laws against undue influence are most necessary in the worst of times, as they promote the objective decisionmaking of public officials, which also is most necessary in the worst of times.\(^7\)

Our decision herein in no way impedes the ability of the Governor, Lieutenant Governor, or other public officials to engage in news conferences, make press releases, or be covered by the media in regard to the pandemic or other topics. Further, neither Section 112.3215(6)(a) nor Section 112.3148 preclude the company from providing public service announcements in which public officers or public employees who are not themselves "reporting individuals" or "procurement employees"\(^8\) appear. Rather, our decision is limited to the provision by the principal of a lobbyist of publicity and exposure, via orchestrated or produced public service announcements, to persons subject to the expenditure or gift laws.

Your question is answered accordingly.\(^9\)

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\(^7\) Additionally, while the Legislature has provided an exemption to the doing business with one's agency and conflicting employment or contractual relationship prohibitions of Sections 112.313(3) and 112.313(7), Florida Statutes, for an emergency purchase or contract to protect the health, safety, or welfare of citizens, via Section 112.313(12)(d), Florida Statutes, it has enacted no similar exemption regarding Sections 112.3215(6)(a) or 112.3148.

\(^8\) "Procurement employee" is defined in Section 112.3148(2)(e), Florida Statutes; such persons are subject to Section 112.3148 (the gifts law) but are not subject to Section 112.3215(6)(a) [the expenditure restriction].

\(^9\) In addition to our finding herein regarding Section 112.3215(6)(a), we also observe that the company's provision of public service announcements in which a reporting individual would appear would be prohibited by Section 112.3148(5)(a), Florida Statutes, a portion of the gifts law, which prohibits a principal of a lobbyist from giving a gift with a value in excess of $100 to a reporting individual. Our treatment of Section 112.3148(5)(a) is subordinate to our treatment of Section 112.3215(6)(a) due to the legal-standing-to-request-an-opinion limitations applicable to Section 112.3148, Florida Statutes [see Section 112.322(3)(a), Florida Statutes], and due to the prohibition of Section 112.3215(6)(a) being more strict than, or superseding, that of Section 112.3148(5)(a).
cc: Ronald G. Meyer, Esquire

KBR/cca/ks