

Schafer, Grayden

From: Doug Adkins <dadkins777@bellsouth.net>
Sent: Monday, February 11, 2019 7:23 AM
To: Schafer, Grayden
Subject: FW: SUBMISSION OF ADDITIONAL TESTIMONY

Mr. Schafer

I apologize I misspelled your name and the e-mail got rejected.

Doug

From: Doug Adkins <dadkins777@bellsouth.net>
Sent: Monday, February 11, 2019 7:16 AM
To: 'shafer.grayden@leg.state.fl.us' <shafer.grayden@leg.state.fl.us>
Cc: 'anderson.chris@leg.state.fl.us' <anderson.chris@leg.state.fl.us>
Subject: SUBMISSION OF ADDITIONAL TESTIMONY

Mr. Shafer

I would respectfully like to submit to the Commission the comments and debate from members of the constitutional revision commission on April 16, 2018 <https://thefloridachannel.org/videos/4-16-18-constitution-revision-commission/> located at 5:01 and to 6:23 - associated with proposal 39 which became the amendment #12 revision to the constitution article II, section 8, article 5 section 13 and article 7, new section. I believe that these comments are meaningful and relevant to the intent of the CRC commissioners as to the need for a strict definition of clear meaning of "disproportionate benefit".

Contrary to the testimony given at the last meeting (Feb 8, 2019) there was NOT broad discussion about the application of "case law" relative to how the Commission on Ethics might define this term. It appears to be well recognized based on the debate and discussion that the words "disproportionate intent" while mentioned in case law is intended to be addressed "de novo" by the Commission on Ethics otherwise there would be no need to place these words in the constitution. The 34-4 vote showed substantial support for the intent of the sponsor and the revision, which were drafted in part by experts in the field of legislative affairs, legal issues and had significant knowledge of these issues.

Thank you for allowing me to enter this testimony into the record for consideration. I look forward to seeing you at the next public rule hearing, I plan to submit another proposed rule at that time.

Douglas Adkins
Fernandina Beach
904-583-0134-cell

NO. 12
CONSTITUTIONAL REVISION
ARTICLE II, SECTION 8
ARTICLE V, SECTION 13
ARTICLE XII, NEW SECTION

BALLOT TITLE:

Lobbying and Abuse of Office by Public Officers

BALLOT SUMMARY:

Expands current restrictions on lobbying for compensation by former public officers; creates restrictions on lobbying for compensation by serving public officers and former justices and judges; provides exceptions; prohibits abuse of a public position by public officers and employees to obtain a personal benefit.

FULL TEXT:

ARTICLE II
GENERAL PROVISIONS

SECTION 8. Ethics in government.— A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

- (a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.
- (b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.
- (c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.
- (d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

(e) No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

(f)(1) For purposes of this subsection, the term "public officer" means a statewide elected officer, a member of the legislature, a county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, an elected special district officer in a special district with ad valorem taxing authority, or a person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government.

(2) A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision of this state, during his or her term of office.

(3) A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement for a period of six years after vacation of public position, as follows:

a. A statewide elected officer or member of the legislature shall not lobby the legislature or any state government body or agency.

b. A person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government shall not lobby the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department.

c. A county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority shall not lobby his or her former agency or governing body.

(4) This subsection shall not be construed to prohibit a public officer from carrying out the duties of his or her public office.

(5) The legislature may enact legislation to implement this subsection, including, but not limited to, defining terms and providing penalties for violations. Any such law shall not contain provisions on any other subject.

(g)(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

(h)(1)(g) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

(2) A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself, his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest. The Florida Commission on Ethics shall, by rule in accordance with statutory procedures governing administrative rulemaking, define the term "disproportionate benefit" and prescribe the requisite intent for finding a violation of this prohibition for purposes of enforcing this paragraph. Appropriate penalties shall be prescribed by law.

(i)(h) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.

(j)(i) Schedule—On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

a. A copy of the person's most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (g) (f), and such rules shall include disclosure of secondary sources of income.

(2) Persons holding statewide elective offices shall also file disclosure of their financial interests pursuant to paragraph (1) subsection (i)(1).

(3) The independent commission provided for in subsection (g) (f) shall mean the Florida Commission on Ethics.

ARTICLE V JUDICIARY

SECTION 13. Ethics in the judiciary ~~Prohibited activities.~~—

(a) All justices and judges shall devote full time to their judicial duties. A justice or judge shall not engage in the practice of law or hold office in any political party.

(b) A former justice or former judge shall not lobby for compensation on issues of policy, appropriations, or procurement before the legislative or executive branches of state government for a period of six years after he or she vacates his or her judicial position. The legislature may enact legislation to implement this subsection, including, but not limited to, defining terms and providing penalties for violations. Any such law shall not contain provisions on any other subject.

ARTICLE XII
SCHEDULE

Prohibitions regarding lobbying for compensation and abuse of public position by public officers and public employees.— The amendments to Section 8 of Article II and Section 13 of Article V shall take effect December 31, 2022; except that the amendments to Section 8(h) of Article II shall take effect December 31, 2020, and:

(a) The Florida Commission on Ethics shall, by rule, define the term "disproportionate benefit" and prescribe the requisite intent for finding a violation of the prohibition against abuse of public position by October 1, 2019, as specified in Section 8(h) of Article II.

(b) Following the adoption of rules pursuant to subsection (a), the legislature shall enact implementing legislation establishing penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.

NO. 13
CONSTITUTIONAL REVISION
ARTICLE X, NEW SECTION
ARTICLE XII, NEW SECTION

BALLOT TITLE:

Ends Dog Racing

BALLOT SUMMARY:

Phases out commercial dog racing in connection with wagering by 2020. Other gaming activities are not affected.

FULL TEXT:

ARTICLE X
MISCELLANEOUS

Prohibition on racing of and wagering on greyhounds or other dogs.—The humane treatment of animals is a fundamental value of the people of the State of Florida. After December 31, 2020, a person authorized to conduct gaming or pari-mutuel operations may not race greyhounds or any member of the Canis Familiaris subspecies in connection with any wager for money or any other thing of value in this state, and persons in this state may not wager money or any other thing of value on the outcome of a live dog race occurring in this state. The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.

Doss, Virindia

From: carslay@aol.com
Sent: Tuesday, February 5, 2019 11:59 AM
To: Doss, Virindia
Subject: Rules
Attachments: doss 2519.docx

Thank You
Carlos Slay

February 5, 2019

PROPOSED RULE – RULE 34 – Article II – H – 8 - 2

“Disproportionate Benefit” shall mean any deliberate act or omission by a public officer and public employees that result in a disproportionate benefit for the public officer, the public employee their spouse, children, or employers, any business in which they contract, serve as an officer, partner, director, proprietor or in which they own an interest that results in a special gain, benefit that would not otherwise be available absent their employment with a public entity or services as a public officer. A determination of whether a disproportionate benefit exists shall be made through an investigation of the facts that meet the following criteria;

The Commission on Ethics shall determine a violation of this rule by the following criteria;

1. Did the public officer or public employee receive a non-bid contract from a publicly funded board, commission or governmental agency where there were other entities that could have offered competitive bids?
2. Was the public officer or public employee the most qualified candidate or option available for the position sought if the position was a publicly funded position?
3. Did the public officer seek to circumvent the competitive bid statute in order to assist a vendor with whom the officer had a personal connection?
4. Did the public officer utilize his or her position to seek any legal opinion or advisory opinion to favor his or her use of public resources to create a special gain or benefit for a family member or an employer?
5. Did the public officer or public employee facilitate or provide assistance of any type to encourage the formation of third parties such as foundations, committees or other organizations that would then seek public funds and provide a benefit of any type to a family member to include step children, uncles, aunts, cousins, grandparents, step parents and any other type of family member that might be included as part of an extended family.?
6. Did any public officer or employee fail to discharge their duties in a customary and reasonable fashion and such conduct resulted in a public officer, employee or employer of the public officer gaining a special disproportionate benefit that unfairly creates a benefit to one party at the expense of another.
7. Is there substantial and competent evidence of prior conduct that would demonstrate that the public officer or public employee has engaged in a pattern of conduct in the past that would demonstrate the use of their special powers and privileges to secure a disproportionate benefit for others?
8. Are there examples of conduct that support a deliberate act of any type or pattern of conduct that has resulted in an unfair and disproportionate benefit in favor of the public official or the public employee?

9. The Commission on Ethics shall review public officer's e-mails, credit card statements, personal expense vouchers and use of travel assets to make an initial determination of whether evidence of a disproportionate benefit might exist.
10. The Commission on Ethics shall examine whether any contracts, agreements or business relationships subject of a complaint alleging a violation of this rule have resulted in an unfair advantage to the public officer or the public employee in any way.
11. A disproportionate benefit shall not be present if a public officer or public employee or their employer, spouse or family members are a party to any agreement or contract that is subject to FS 287.001.

Rule 34-18.001

Language Submission – Commission on Ethics

“Disproportionate Benefit” shall mean obtaining through official conduct the agreement or cooperation of state, local or government contracted entities any type of “special benefit” for a public officer, public employee, the employer of a public officer, their family members or any businesses in which they have an interest of more than 10%. A “special benefit” shall include no bid contracts, set aside agreements, memorandum of agreements or any other similar contractual or legal instruments that obligate or bind a state agency, local government or quasi governmental entity, special legislative appropriations not open to competitive bid as defined under FS 287.001 or documents not available to citizens of any type.

The requisite intent for finding a violation of the prohibition shall be that substantial and competent evidence that demonstrates that the public officer or public employee sought to seek a “disproportionate benefit” on behalf of him or herself or for a company in which they have a 10% or more ownership or their employer or any family member no matter the type of relationship. A probable cause investigation shall commence upon evidence that there was at least one attempt to plan or organize a “special benefit” in violation of this prohibition.

34-XX.100 Purpose

In general, the purpose of this rule is to define “disproportionate benefit” as that term is used in Art II, Section 8(h)(2), Florida Constitution as approved by the voters in November 2018. The rule also prescribes the requisite intent to find a violation by a person included within the scope of this rule.

34-XX.200 Definitions

For purposes of defining “disproportionate benefit” and determining the requisite intent for a violation:

- (1) “public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.
- (2) “agency” means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial or legislative; any department, division, bureau, commission, authority, or political subdivision of this state; any public school, community college, or state university; or any special district as defined in s. 189.012.
- (3) “public employee” includes....

34-XX.300 Applicability

No public officer or public employee shall corruptly use his or her official position to obtain an economic benefit for him or herself, his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest that is materially greater than any economic benefit accruing to other similarly situated persons.

(1) In determining whether there is a materially greater economic benefit, the following factors shall be taken into account:

- a. The size of the class affected by the vote or action.
- b. The nature of the interests involved.
- c. The degree to which the interests of all members of the class are affected by the vote or action.
- d. The degree to which the officer or employee, his or her spouse, children or employer; or any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest receives a greater economic benefit when compared to other members of the class.

e. The degree to which there is uncertainty at the time of the vote or action as to whether there would be any economic benefit to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit must also be considered.

(2) No public officer or employee shall be considered to have corruptly used his or her official position in violation of this section if s/he has complied with the Code of Ethics as it relates to the vote or action taken.

34-XX.400 Examples