VOTING CONFLICT; CONFLICT OF INTEREST

CITY COMMISSIONER'S FEDERAL GOVERNMENT EMPLOYMENT SUPERVISOR APPLICANT FOR CITY MANAGER POSITION

To: Jacob G. Horowitz, Esquire (Cooper City)

SUMMARY:

Under the particular circumstances of this opinion, neither a voting conflict nor a conflicting employment exist for a city commissioner where he is employed by a federal government entity at which his supervisor also is an applicant for city manager.

QUESTION:

Does a voting conflict or a conflicting employment exist for a city commissioner where the commissioner's supervisor in the commissioner's federal employment is an applicant for, and could be hired to, the position of city manager?

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

In your inquiry, you write that a city is seeking to hire a city manager via use of a recruiter ("headhunter") and subsequent processes. More particularly, you relate that the city, through the recruiter, received approximately forty-five applications; that the recruiter reviewed the applications and presented eleven to the city commission; and that each of the eleven meet the qualifications for
the position, as set forth in the city charter. At a special meeting, the city commission narrowed the applicants to a short list of five, to be examined further by the recruiter; and following the recruiter's further review, the city commissioners may interview the applicants.¹

One of the shortlisted applicants is a city resident who serves as a supervisor in a local division of a federal law enforcement agency in which the city commissioner also is employed.² In their federal positions, the applicant is the commissioner's supervisor. You relate that the commissioner had no role in the applicant's decision to apply; that the commissioner is not promoting the applicant or advocating for the applicant to be offered the position of city manager, either publicly or privately; and that the commissioner has no reason to believe his role or relationship at the federal agency will be affected by the applicant's being offered or not being offered the city manager position. Further, you state that the applicant is not a relative of the commissioner and that any action taken by the city commission as to the applicant would not result in an economic benefit or harm to the commissioner.

Statutes in the Code of Ethics central to your inquiry are Sections 112.3143(3)(a), Florida Statutes (voting conflicts), and Section 112.313(7)(a), Florida Statutes (conflicting employment or contractual relationship). These statutes are set forth, below.

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

¹ The city commission has not yet determined how the process will move forward, aside from providing direction to the recruiter to continue with his review of the shortlisted applicants; there is no guarantee that any of the shortlisted applicants will ultimately be recommended by the recruiter, interviewed by the city commission, or offered the city manager position; and the city commission always has the right to reject all of the applicants and continue with the search.

² You state that in the event the applicant is selected as city manager he presumably would resign from his position at the federal agency.
public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. [Section 112.3143(3)(a), 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.]

Under the particular circumstances presented, we find that the commissioner will not be presented with a voting conflict under Section 112.3143(3)(a). There is no indication that a vote (measure) of the city commission regarding the applicant will inure to the "special private gain or loss" [which must be an economic benefit or harm, see Section 112.3143(1)(d), Florida Statutes] of the commissioner or to that of any person or entity standing in a relationship to the commissioner as listed in Section 112.3143(3)(a).

As to Section 112.313(7)(a), under the particular circumstances presented, we find no prohibited conflict occasioned by the commissioner's employment at the federal agency. Under the first part of the statute, there is no indication that his employer (the federal agency) is subject

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3 However, it appears that Section 286.012, Florida Statutes (the voting requirement law), will allow the commissioner's abstention from voting, should he choose to do so, since that statute allows abstention when there appears to be a possible voting conflict, in the interest of promoting transparency in government.

4 Notably, the applicant is not the commissioner's relative; and the federal agency, as a government entity, rather than the applicant, is the commissioner's principal/employer.
to the regulation of, or is doing business with, the city. Under the second part, the circumstances are not indicative of a continuing or frequently recurring conflict or an impediment to the full and faithful discharge of the commissioner's public duties. We are not prepared to find, in the context of the commissioner's professional, credentialed, federal employment, coupled with applicants for the city manager position having been vetted by the recruiter and meeting required qualifications for the job, that the commissioner would be tempted to disregard the objective performance of his public duties regarding selection of a city manager merely because his federal employment supervisor is an applicant.

This question is answered accordingly,

cc: Jacob G. Horowitz, Esquire

KBR/cca/vlk
Chris,
Good afternoon. I believe that you assumed the position of Executive Director on July 1. If I am correct, please let me offer my most heartfelt congratulations on behalf of our entire office. It is very well-deserved, and we wish you lots of continued success with the agency moving forward.

On a business note, we have a potential Ch. 112, F.S., issue that we were hoping to get your insight on.

The City of Cooper City ("City") is in the process of hiring a new city manager. The City has engaged a headhunter to assist with the search and review of applicants. The City, though the headhunter, has received approximately forty-five (45) applicants. The headhunter culled through the applications and presented eleven (11) prospective candidates to the City Commission for consideration. Each of the eleven (11) candidates presented by the headhunter meet the qualifications for the city manager position, as set forth in the City Charter.

Thomas Jones is one of the candidates submitted to the City Commission for consideration. Mr. Jones is a Cooper City resident and currently employed as the Assistant Special Agent in Charge of the Federal Bureau of Investigation – Miami Division.

Commissioner Jeff Green is a member of the City Commission. Commissioner Green is also an FBI employee. Mr. Jones is Commissioner Green’s immediate supervisor at the FBI. Commissioner Green had no role is Mr. Jones’ decision to apply for the city manager position. Commissioner Green is not promoting Mr. Jones nor advocating for Mr. Jones to be offered the city manager position, publicly or privately. The commissioner has no reason to believe that his role or relationship at the FBI will be affected, irrespective of whether Mr. Jones is offered the city manager position.

In the event that Mr. Jones was offered the city manager position, he would presumably resign from his position at the FBI.

At a special commission meeting on July 8, the City Commission considered the eleven (11) applicants presented by the headhunter and narrowed the pool to a shortlist of five (5) applicants to be examined further. Mr. Jones was included among the shortlisted candidates. The headhunter will inquire further of the individuals on the shortlist and, following the headhunter’s further review, the commissioners may interview the applicants. The commission has not yet determined how the process will move forward, aside from providing direction to the headhunter to continue with his review of the shortlisted applicants. There is no guarantee that any of the shortlisted applicants will ultimately be recommended by the headhunter, interviewed by the commission, and/or offered the city manager position. The commission always has the right to reject all of the applicants and continue with the search.

Based on the foregoing, Commissioner Green is seeking an opinion from your office as to his duties and obligations in the context of Ch. 112. F.S. For reference, Mr. Jones is not a “relative” of the commissioner, as defined in either Sec. 112.3135, F.S. or Sec. 112.3143. Nevertheless, as noted, the commissioner is not advocating for the hiring of Mr. Jones as the city manager.
Further, any action taken by the City Commission as it relates to Mr. Jones would not result in an economic benefit or harm that would inure to the commissioner. Nevertheless, in the event that your office believes that this scenario creates a voting conflict, or appearance thereof (Sec. 286.012), the commissioner will abstain and file the appropriate form. If your office does believe that this scenario creates a voting conflict, would Commissioner Green be required to abstain from any vote on the appointment of a city manager? In other words, would a conflict exist simply due to the fact that Mr. Jones was being considered, irrespective of whether the commissioner was being asked to vote to hire Mr. Jones or another candidate?

In an abundance of caution, Commissioner Green is seeking guidance from your office on these, or any other Ch. 112, F.S. issues related to the factual scenario set forth above. Thank you for the consideration. Please let us know if there is any additional information that we can provide.

Jacob G. Horowitz

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