

FILE 2774 — March 5, 2021

CONFLICT OF INTEREST; VOTING CONFLICT

**CITY COUNCIL MEMBER'S BUSINESS SUBCONTRACTING ON CONTRACT
BETWEEN CONTRACTOR AND SHERIFF'S OFFICE**

To: Kirby Oberdorfer, Deputy Director of Ethics, Compliance & Oversight (Jacksonville)

SUMMARY:

Sections 112.313(3) and 112.313(7)(a), Florida Statutes, will not give rise to a conflict of interest when a City Council Member's business acts as a subcontractor on a contract between a contractor and the Sheriff's Office. The arrangement, as presented, is not a violation of Section 112.313(6), Florida Statutes, or Article II, Section 8(g)(2), Florida Constitution. The Council Member will have a voting conflict under Section 112.3143(3), Florida Statutes, if he votes on any matter pertaining to the budget of the Sheriff's Office. Referenced are CEO 96-32, CEO 07-2, CEO 08-8, CEO 11-6, and CEO 18-4.

QUESTION 1:

Is a prohibited conflict of interest created if the business of a City Council Member, which sells pharmacy consulting services, is subcontracted by a subcontractor to a business contracting with the Sheriff's Office?

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

You write the Commission to ask whether the facts you present create a prohibited conflict of interest for a member of the City of Jacksonville City Council under the Code of Ethics for Public Officers and Employees. In your inquiry, you explain a member of the City Council is also a certified pharmacist and a certified consultant pharmacist licensed by the State of Florida Board of Pharmacy. The Council Member, you state, holds private employment in the field of pharmacy as the director of a long-term care pharmacy and the owner, director, and sole employee of a corporation (Council Member's Business) through which the Council Member performs pharmaceutical consulting work as a consulting pharmacist.¹ Onsite and institutional pharmacies, you explain, are required by Section 465.019(5), Florida Statutes, to have the supervision of a consulting pharmacist.

You state that the Jacksonville Sheriff's Office (JSO) operates detention facilities that contain institutional pharmacies. JSO contracts with Armor Correctional Health Services, Inc., (Armor) to provide certain healthcare-related services, including pharmacy services, to the inmates of its detention facilities. Armor subcontracts with Diamond Pharmacy Services (Diamond) for pharmaceutical medications for the inmates. Diamond, in turn, requires the services of a consultant pharmacist to fulfill its obligations and that consultant pharmacist is managed and paid by Diamond. Diamond is contemplating a contract with Council Member's Business to fulfill the consulting pharmacist role.

If Diamond contracts with Council Member's Business to perform the work, the Council Member, as the sole employee of Council Member's Business and in his capacity as a consulting pharmacist, will be responsible for (1) ensuring all medication procedures have been followed, (2) preparing a monthly report of his activities and findings for review by Armor and JSO, and (3) preparing a quarterly report on quality improvement for review by Armor and JSO. The

¹ The legal obligations of a consultant pharmacist are detailed in Section 465.0125, Florida Statutes.

Council Member, as a consulting pharmacist, would not have any role in the provision of care to inmates and would not have the ability to make decisions related to medication utilization at the JSO detention facilities, including the ordering, purchasing, prescribing, and pricing of medication.

Regarding the conflict of interest question, Section 112.313(3) provides:

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 . . . 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.

The first prohibition in this statute operates to proscribe a public officer or employee in his or her public role from buying, renting, or leasing realty, goods, or services from a business entity in which the public officer, his or her spouse, or child own a material (greater than five percent) interest. The second prohibition operates to proscribe a public officer or employee in their private capacity from selling, renting, or leasing realty, goods, or services to his or her agency or any agency of his or her political subdivision.

Also, Section 112.313(7)(a) states:

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 clause of this statute prohibits a public officer or employee from having employment or a contractual relationship with a business entity or an agency that is regulated by or is doing business with his or her agency. The second clause of this statute prohibits a public officer or employee from having employment or a contractual relationship that would create a continuing or frequently recurring conflict of interest or that would create an impediment to the full and faithful discharge of his or her public duties.

Section 112.313(3) will not be implicated if Diamond subcontracts with Council Member's Business. Although the Council Member owns more than five percent of Council Member's Business, Council Member's Business would not be acting in a private capacity to sell, rent, or lease services to an agency of the Council Member's political subdivision—rather to Diamond, a private company. We have consistently opined in the past that "a public officer does not 'act in a private capacity' to sell to his political subdivision or an agency thereof when his company subcontracts with another company that in turn is selling services to his political subdivision or agency." CEO 08-8 and CEO 07-2.

When analyzing Section 112.313(7)(a), it is imperative to first determine what the Council Member's agency is. As we have opined in the past, the agency of a city council member is the city council. CEO 18-4 (*citing* CEO 96-32). If Diamond subcontracts the consulting pharmacist duties to Council Member's Business, this will not create a prohibited conflict of interest under the first clause of Section 112.313(7)(a). In that event, the Council Member would have employment with Council Member's Business, but Council Member's

Business would not be doing business with his agency, the City Council of the City of Jacksonville; it would be doing business with Diamond.

We have also found a contractual relationship between a public officer or employee and a business entity or agency when no compensation directly flows from one to the other, if the public officer's or employee's professional license is used to provide the business entity or agency with a service. *See, e.g.*, CEO 11-6. However, if a contractual relationship with JSO is found to exist for the Council Member because his professional license is being used to provide supervision to JSO institutional pharmacies, JSO is still not the Council Member's agency. Thus, the dynamic contemplated and prohibited under the first clause of Section 112.313(7)(a) is not present either way.

There is also nothing in the facts presented to indicate that a prohibited conflict of interest will be created under the second clause of Section 112.313(7)(a). The Council Member's performance as a subcontracted consulting pharmacist is distinct from his public role as a member of the City Council and would not, in our view, tempt the Council Member to dishonor his public duties. *Zerweck v. State Commission on Ethics*, 409 So. 2d 57 (Fla. 4th DCA 1982).

For these reasons, a prohibited conflict of interest is not created for the Council Member if Diamond subcontracts with Council Member's Business. Question 1 is answered accordingly.

QUESTION 2:

Is a voting conflict created if the City Council Member votes on the budget of the Sheriff's Office?

Under the circumstances presented, the question is answered in the affirmative.

In your inquiry, you explain that the City Council reviews and approves the JSO budget, which includes funds for the JSO contract with Armor. The Council Member, in his role as a member of the City Council, expects to be presented with votes regarding the JSO budget on an annual basis.

In analyzing whether a voting conflict exists, we review Section 112.3143(3), Florida Statutes, which states:

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. 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.

Because the budget of the JSO includes funds for the contract with Armor, any vote the Council Member takes regarding that budget will inure to his special private gain or loss as the owner of Council Member's Business, which provides services on the same contract as a subcontractor to a subcontractor of Armor. For that reason, for as long as his business is providing pharmacy consulting services on the JSO contract, the Council Member will have a voting conflict on any votes relating to the JSO budget, including a vote on the City budget if it includes the JSO budget. When those votes occur and the voting conflict is present, the Council Member must publicly state his interest in the JSO budget before the vote, abstain from voting, and file CE Form 8B, "Memorandum of Voting Conflict for County, Municipal, and Other Local

Public Officers," within 15 days of the vote with the person responsible for recording the minutes of the meeting. However, the Council Member is advised that bifurcating the City budget vote into two separate votes so that he can abstain from voting on the JSO budget, which is the source of his voting conflict, will then allow him to vote on the remainder of the City budget.

Your question is answered accordingly.²

JL/sjz/ks

cc: Kirby Oberdorfer, Esq.

² With reference to the "misuse of position" statute (Section 112.313(6), Florida Statutes) and the "abuse to obtain a disproportionate benefit" Constitutional provision (Article II, Section 8(g)(2), Florida Constitution), we find that the facts before us do not indicate a misuse of position or an abuse to obtain a disproportionate benefit. We do not identify any use, misuse, or abuse of the Council Member's public office or the resources of his office.

Anderson, Chris

From: Oberdorfer, Kirby <KOberdorfer@coj.net>
Sent: Friday, December 18, 2020 4:57 PM
To: Anderson, Chris
Cc: Salem, Ronald; Hodges, Lawsikia; Miller, Carla
Subject: RE: Request for Informal Advisory Opinion Regarding Conflict of Interest Inquiry
Attachments: CM Salem Conflict of Interest Inquiry Updated Dec 2020 FINAL.docx

Dear Mr. Anderson,

On behalf of Dr. Ronald B. Salem, a member of the City of Jacksonville's City Council, I am hereby submitting the attached request for an informal advisory opinion regarding his conflict of interest inquiry.

Please let me know if I can be of any assistance with this matter or if you have any questions or need further information for this request.

Sincerely,

Kirby G. Oberdorfer
Deputy Director
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MEMORANDUM

**TO: C. Christopher Anderson, III, Executive Director and General Counsel
State of Florida Commission on Ethics
325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303**

**FROM: Kirby Oberdorfer, Deputy Director of Ethics, Compliance & Oversight, and
Lawsikia Hodges, Deputy General Counsel, Office of General Counsel**

**RE: SEC Conflict of Interest Inquiry; City of Jacksonville City Council Member Ronald
B. Salem**

DATE: December 18, 2020

I. INTRODUCTION

Pursuant to Rules 34-6.002 and 34-6.004, on behalf of City of Jacksonville City Council Member Ronald B. Salem and in accordance with his request, we are writing to request an informal written advisory opinion on the ethics laws inquiry set forth below. Council Member Salem has requested an opinion be issued by the Commission on Ethics as soon as possible. Please be advised that the Office of Ethics, Compliance & Oversight has discussed this inquiry with you in prior telephone conversations.

II. FACTUAL BACKGROUND

Dr. Ronald B. Salem, Pharm D., was elected by the citizens of Jacksonville to the Jacksonville City Council ("City Council") for At-Large Group 2 on March 19, 2019 and was sworn into office on July 1, 2019. Dr. Salem never held elective office prior to his election to City Council. In addition to serving as a Council Member, Dr. Salem is also a certified Pharmacist and a certified Consultant Pharmacist licensed by the State of Florida Board of Pharmacy since 1978. Dr. Salem is employed full-time as the Director of PharMerica-Jacksonville, a long-term care pharmacy that services approximately twenty-five (25) nursing homes and related facilities in North Florida. As Director of PharMerica, Dr. Salem manages the daily operations of the pharmacy, including preparing the budget, hiring, marketing, and ensuring compliance with state and federal pharmaceutical regulations. Additionally, he is sole owner and director of Ronald B. Salem & Associates, Inc., a Florida for-profit corporation established in 2002.

Dr. Salem seeks clarification on his ethical obligations as a Council Member relating to a potential contractual relationship between Ronald B. Salem & Associates and Diamond Pharmacy Services, a company that provides pharmaceutical services for the John E. Goode Pre-

Trial Detention Facility (known as the “Duval County Jail”) and other detention facilities operated by the City of Jacksonville Sheriff’s Office (“JSO”) Department of Corrections.

Ronald B. Salem & Associates is wholly-owned and managed by Dr. Salem in his capacity as President, and Dr. Salem is the sole employee. Ronald B. Salem & Associates is engaged in the business of providing consultant pharmacy services primarily to surgical centers and in-patient drug treatment entities in Jacksonville. As a Consultant Pharmacist, Dr. Salem supervises onsite institutional pharmacies at these facilities through his Pharmacist and Consultant Pharmacist licenses, in accordance with Florida Statutes sections 465.0125 and 465.019 and governing administrative rules promulgated by the Florida Board of Pharmacy. Per section 465.019, these facilities are required to retain a Consultant Pharmacist, such as Dr. Salem, in order for them to lawfully store and administer medicinal drugs at their respective onsite pharmacies. In his capacity as a Consultant Pharmacist, Dr. Salem inspects the medicinal drugs maintained on the onsite pharmacies he supervises and ensures that the medicinal drugs are being stored and dispensed in accordance with applicable laws and regulations. He also has responsibility as a Consultant Pharmacist to maintain all medicinal drug records for the onsite pharmacies required by law and to develop and ensure compliance with procedures regarding the proper storage and dispensation of medication at the onsite pharmacies.

Recently, Diamond Pharmacy Services and Dr. Salem began discussions about Ronald B. Salem & Associates potentially providing consultant pharmacy services, through Dr. Salem’s Consultant Pharmacist license, at the Duval County Jail and other detention facilities owned and operated by the JSO Department of Corrections.¹ In October 2017, JSO entered into a contract with Armor Correctional Health Services, Inc. for the provision of healthcare related services, including medical and pharmacy services, to inmates housed at the Duval County Jail and other JSO detention facilities (“JSO Contract”). The JSO Contract is the only contract JSO has for healthcare services. The JSO Contract was procured through the City of Jacksonville’s procurement process prior to Dr. Salem’s election to City Council. City Council did not and, in the future, will not review or approve the JSO Contract and does not have any role in selecting or approving subcontractors for the JSO Contract. Through the JSO Contract, Armor Correctional Health Services subcontracts with Diamond Pharmacy Services for pharmaceutical medications for inmates. Diamond Pharmacy Services subsequently subcontracts with a provider for consultant pharmacy services at the Duval County Jail and other detention facilities. The Consultant Pharmacist is managed and paid through Diamond Pharmacy Services.

The primary duties of the Consultant Pharmacist are set forth in section 3.05 paragraphs 7 and 8 of the JSO Contract. Per the JSO Contract, the Consultant Pharmacist is required to perform monthly inspections of all locations in JSO detention facilities where medications are stored, including the manner in which medications are stored, and review records regarding administration of medication and expiration dates of medications. During the inspections, the Consultant Pharmacist ensures that the Duval County Jail pharmacy is operating in accordance

¹Per the Health Services Compliance Manager for JSO, the Consultant Pharmacist at the Duval County Jail advised that he/she will no longer provide consultant pharmacy services.

with applicable laws and regulations, all medication procedures have been followed, and controlled substances are properly tracked. Additionally, the Consultant Pharmacist is responsible for preparing a monthly report of his/her activities and findings for review by Armor Correctional Health Services officials, which in turn reports this information to JSO. The Consultant Pharmacist also prepares a quarterly Continuous Quality Improvement report that is reviewed with Armor Correctional Health Services officials. The Consultant Pharmacist is not involved with patient care provided to the inmates and does not interact with JSO officials or employees in the performance of the Consultant Pharmacist duties. Furthermore, the Consultant Pharmacist does not have the authority to determine nor the ability to influence decisions regarding medications utilized at JSO facilities, including the ordering and purchasing of medications, prescribing of medications to inmates, nor the cost of the medications and other pharmacy expenses at the JSO detention facilities.

During the annual budget process for the City of Jacksonville, the City Council reviews and approves of the budget for JSO. The JSO budget presented to City Council includes expenditures related to Professional and Contractual Services. The Professional and Contractual Services line items encompass several professional or contractual services managed by the JSO Corrections Division, including: (1) the JSO Contract; (2) security and guard services; (3) inmate food services; (4) assessment center contract and other services.² In reviewing and voting upon the JSO budget, City Council does not receive any identifying information regarding any of the vendors with whom JSO contracts or subcontracts for professional or contractual services. However, Council Members may access information related to the expenditures by JSO for professional and contractual services through various departments within the City.

III. DISCUSSION

Whether a prohibited conflict of interest arises under Florida Statutes section 112.313(3) and/or section 112.313(7) for Dr. Salem as a result of the potential contract between Ronald B. Salem & Associates and Diamond Pharmacy Services for the provision of consultant pharmacy services at the Duval County Jail and other JSO detention facilities?

LAW

Florida Statutes section 112.313(3) prohibits a public official from doing business with his or her own agency by either (1) purchasing services for his/her agency in his/her official capacity from an entity of which the public official, his or her spouse or child is an officer, director, or owner of material interest or (2) by selling services in his/her private capacity to his/her agency or any agency of the political subdivision encompassing the agency. Section 112.313(3) does not apply where there is no business relationship between the public official's governmental agency or

² For FY 2020-2021, City Council approved \$24,956,713 requested in the JSO budget for the contracts included in the JSO Corrections Division Professional and Contractual Services line items, including \$14,291,598 for the JSO Contract. The City's annual budget for FY 2020-2021 was approved by City Council on September 22, 2020 in Ordinance 2020-504.

political subdivision and the company employing the public official. CEO 08-08; CEO 89-38. As such, the Commission on Ethics has consistently found that a public officer does not “act in a private capacity” to sell services to his/her political subdivision or related agency when the public official’s company subcontracts with another company that is selling services to the political subdivision or related agency. CEO 08-8; CEO 07-2. Additionally, the purchase of services, goods or realty is a vital element to the application of section 112.313(3). CEO 18-6; CEO 92-43. When a governmental department or agency acts to purchase the services rather than the governing body of the governmental entity, the Commission on Ethics has determined that no purchase of services within the meaning of section 112.313(3) has occurred by the governing body. CEO 82-24.

A public official is also prohibited by Florida Statutes section 112.313(7)(a) from having a contractual or employment relationship with a business which in turn is doing business with or is regulated by his/her agency. To ascertain whether there is a prohibited conflict of interest under section 112.313(7)(a), the agency of the public official must first be determined. CEO 94-36. After determining the agency of the public official, the next essential step is determining with whom the public official has a contractual or employment relationship, CEO 08-7, and the nature of the relationship between the entity with which the public official has a relationship and the governmental agency of the public official. CEO 08-1; CEO 08-8. In analyzing the prohibited conflict of interest in section 112.313(7)(a) in situations wherein a public official’s corporation or LLC has a contract with another entity that has a relationship with the public official’s governmental agency, the Commission on Ethics has determined that the corporation or LLC is a separate legal entity from the public official, and, as such, the corporation or LLC is the pertinent party holding the contractual relationship with the other entity that is doing business with the official’s public agency. CEO 14-27; CEO 08-23; CEO 08-7. In limited circumstances, a conflict of interest under section 112.313(7)(a) may arise when a public official’s company has a contract with another entity that is doing business with the public official’s agency only if (1) the public official’s professional license is necessary to perform the work under the contract with the other entity and (2) the other entity is doing some business with the public officer’s agency. CEO 19-2; CEO 08-8 n.4. If the entity with which the public official has a requisite relationship is not doing business with the officer’s agency or is regulated by a separate and distinct agency of the government, no conflict of interest under section 112.313(7)(a) arises. CEO 08-8 n.4; CEO 08-1; CEO 99-7. As noted by the Commission on Ethics, there must be “adequate intersection” between the private interests of the public official and the public official’s agency’s public duties, functions and subject matter in order for a conflict to exist under section 112.313(7)(a). CEO 11-06.

ANALYSIS

Although section 112.313(3) generally prohibits doing business with one’s own agency, there does not appear to be a conflict of interest under section 112.313(3) with respect to any agreement between Ronald B. Salem & Associates and Diamond Pharmacy Services for the provision of consultant pharmacy services by Dr. Salem at the Duval County Jail. Neither Dr. Salem, Ronald B. Salem & Associates nor Diamond Pharmacy Services is doing business with JSO or the City of Jacksonville. Rather, Ronald B. Salem & Associates is doing business with a

subcontractor to Armor Correctional Health Services, the entity and primary contractor that has the business relationship with JSO. Thus, Dr. Salem would not be acting in his official capacity as a City Council member to purchase services for the City or JSO from Ronald B. Salem & Associates or Diamond Pharmacy Services, as City Council does not have any responsibility or role in determining the contractors or subcontractors who perform work related to the JSO Contract. Additionally, Dr. Salem will not be selling services in his private capacity as an officer for Ronald B. Salem & Associates to the City or JSO because Ronald B. Salem & Associates is only serving as a sub-subcontractor for the JSO Contract, and is not the main contractor that will receive funding from JSO.

Additionally, the prohibition in section 112.313(3) against doing business with one's own agency does not appear to be applicable to a potential contract between Ronald B. Salem & Associates and Diamond Pharmacy Services because the essential element of City Council "purchasing services" is not met. Neither Dr. Salem nor City Council purchased any services from Diamond Pharmacy Services nor selected any contractors or subcontractors for the JSO Contract. Rather, JSO, a separate departmental entity in the City of Jacksonville, acted to purchase healthcare related services from Armor Correctional Health Services when it entered into the JSO Contract. The JSO Contract and subcontracts for services related to the JSO Contract are similar to the circumstances in CEO opinion 82-24, in which the Commission on Ethics determined that the City Physician, a different department from the governing body of the City Commission, purchased the services of the City Commissioner's wife because the Physician, not the City Commission, was responsible for hiring her.

As to section 112.313(7)(a), there also does not appear to be a prohibitive conflict of interest arising from any prospective contract between Ronald B. Salem & Associates and Diamond Pharmacy Services for consulting pharmacy services at the Duval County Jail because Dr. Salem will not have an employment or contractual relationship with any entity that is doing business or is regulated by his agency, the City Council.³ Although Dr. Salem has an employment relationship with Ronald B. Salem & Associates and arguably may have a contractual relationship with Diamond Pharmacy Services as a result of him providing services under his professional Consultant Pharmacist license, Diamond Pharmacy Services is not doing business with nor is regulated by the City Council or JSO. Additionally, Dr. Salem does not have any employment or contractual relationship with Armor Correctional Health Services, which is the only entity that is doing business with a City of Jacksonville agency, JSO, through the JSO Contract. JSO is a separate, subordinate agency that distinct from City Council. As noted above, City Council does not review or approve of the JSO Contract nor any of the contractors or subcontractors providing services under the JSO Contract. Additionally, Armor Correctional Health Services is the only entity receiving funding from City Council's annual approval of the JSO budget. Dr. Salem and Ronald B. Salem & Associates will receive payment for the provision of consultant pharmacy services through the subcontract between Ronald B. Salem & Associates and Diamond Pharmacy Services, neither of which have any contracts or other

³As previously determined, a City Council member's agency for purposes of section 112.313(7)(a) is the City Council for the political subdivision for which he or she serves. CEO 08-1.

C. Christopher Anderson, III, Executive Director and General Counsel
State of Florida Commission on Ethics
December 22, 2020
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business with JSO or the City Council. No prohibited conflict of interest arises under section 112.313(7)(a) because there is not sufficient intersection between the private interests of Dr. Salem and his public duties and functions as a City Council member.