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State of Florida
COMMISSION ON ETHICS
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"A Public Office is a Public Trust"

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MEMORANDUM

TO: Commissioners
FROM: Steven J Zuilkowski, Deputy Executive Director & General Counsel
DATE: February 19, 2026
RE: Withdrawal Request – Formal Opinion File 2830

SJZ

At your January meeting, you considered the request for a formal opinion brought by Jason Teal, City of Jacksonville City Council Secretary, on behalf of City Council Member Joe Carlucci. In advance of that meeting, staff circulated a draft opinion for your consideration. At the meeting, Mr. Teal was represented by Attorney Jason Gabriel. At the conclusion of that meeting, you voted to table your consideration of the matter until the next meeting after a motion to adopt the draft opinion prepared by staff failed by a 3-3 vote.

On February 18, 2026, Mr. Gabriel submitted to the Commission a request to withdraw the request for a formal opinion. As the basis for that request, Mr. Gabriel emphasizes that the issues raised by the formal opinion request appear to be the subject of legislation at the Florida Legislature. In particular, he cites to Senate Bill 572, which was recently amended to unambiguously settle the question raised in the formal opinion request. The Senate voted to pass Senate Bill 572, as amended, and it is, as of the date of this memorandum, in House Messages.

The Commission has a rule concerning the withdrawal of formal opinion requests. According to Rule 34-6.006(7), Fla. Admin. Code, "The person requesting an advisory opinion may not withdraw his request after copies of the working draft of the opinion have been sent to him and to Commission members except with the consent of the Commission for good cause shown." With this rule in mind, you must decide whether to allow the withdrawal of the formal opinion request.

Your staff recommends that you grant the request for withdrawal because good cause does appear to be present here. At the last meeting, your staff advised that the law as written did not allow for an exception to the application of the nepotism law. Since that discussion, the Senate amended and then passed Senate Bill 572 to create an exception that would fully address the question. It would be prudent to allow the requestor to withdraw the question now because (1) the current

legislation, if it becomes law, will give the requestor the clarity he had sought through the formal opinion process, (2) the Commission's issuance of an opinion at this time may serve to work at cross-purposes by creating confusion while the Legislature has a parallel debate on the policy, and (3) the Commission has allowed withdrawals in the past where there was a significant change in circumstances affecting the requestor's need for the opinion. The requestor, of course, is free to bring the question back before at a later date you if it is still ripe then.

--- End of Memorandum ---

File No. 2830

Zuilkowski, Steven

From: Gabriel, Jason <jgabriel@burr.com>
Sent: Wednesday, February 18, 2026 2:27 PM
To: Zuilkowski, Steven
Cc: Teal, Jason - CCSS
Subject: RE: Florida Commission on Ethics; File No.: 2830

Dear Steve:

Please accept this correspondence as our formal request, pursuant to Florida Administrative Code Rule 34-6.006(7), to withdraw Advisory Opinion File No. 2830 from consideration at the Florida Commission on Ethics.

We are the party that submitted the request for the advisory opinion. After further review, and as discussed with your office, we have determined that pursuing a legislative clarification to the underlying statute is the most optimal course of action for all involved. As you know, this is actively being pursued through Senate Bill 572 during the present 2026 Legislative Session.

In light of this legislative effort, we respectfully request that File No. 2830 be removed from the March 6, 2026 agenda and that the matter be closed without the issuance of an opinion.

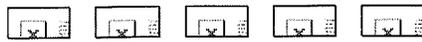
Thank you for your prompt attention to this request. Please let me know if you require any additional information or documentation to effectuate the withdrawal. We would appreciate written confirmation once the file has been withdrawn.

Thanks very much for all your efforts, time and communications on this important matter.

-Jason G.

Jason R. Gabriel
Partner

jgabriel@burr.com
904-232-7211 (*direct*)
904-226-8191 (*mobile*)



50 North Laura Street, Suite 3000
Jacksonville, Florida 32202

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From: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Sent: Wednesday, February 18, 2026 10:27 AM
To: Teal, Jason - CCSS <JTeal@coj.net>; Gabriel, Jason <jgabriel@burr.com>
Subject: Commission on Ethics: Mailout tomorrow

This is an EXTERNAL email! STOP, ASSESS, and VERIFY

Gentlemen,

Tomorrow is the mailout for the March Commission meeting. I was hoping to chat with one of you today about the status of the formal opinion request. Let me know when is a good time to chat.

Steve

Steven J. Zuilkowski

Deputy Executive Director & General Counsel

Florida Commission on Ethics

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ORIGINAL

File 2830



**OFFICE OF THE COUNCIL
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FLORIDA
COMMISSION ON ETHICS

DEC 29 2025

RECEIVED

**JASON R. TEAL
COUNCIL SECRETARY /
LEGISLATIVE COUNSEL
CITY OF JACKSONVILLE**

December 17, 2025

VIA ELECTRONIC and U.S. MAIL

Ms. Kerrie Stillman, Executive Director
Florida Commission on Ethics
P.O. Drawer 15709
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STILLMAN.KERRIE@leg.state.fl.us

Mr. Stephen Zuilkowski, General Counsel
Florida Commission on Ethics
P.O. Drawer 15709
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ZUILKOWSKI.STEVEN@leg.state.fl.us

RE: Request for Advisory Opinion

Dear Ms. Stillman and Mr. Zuilkowski:

On behalf of Jacksonville City Council member Joe Carlucci, please find attached a request for an advisory opinion from the Florida Commission on Ethics concerning application of the state nepotism laws on Jacksonville City Council leadership elections. I have discussed this matter with Steve Zuilkowski, who is familiar with the issue and is expecting this request.

Please feel free to contact me at JTeal@coj.net or 904-255-5133 if you have any questions.

Sincerely,

Jason Teal
City Council Legislative Counsel

Application of Florida Statute Chapter 112, Part III on Jacksonville City Council Leadership Elections

I. Standing:

The requestor is a member of the Jacksonville City Council, the 19-member, independently elected, legislative body of the City of Jacksonville. The requestor's father is also a member of the Council. The requestor is uncertain as to his rights and responsibilities as a Council member. Pursuant to Jacksonville's Charter, he has a legal duty to annually elect Council leadership in the form of the Council president and Council vice president. If either the father or the son were to run for Council leadership, what prohibitions exist under Florida Statutes Chapter 112 that may impact the son's ability to run for Council leadership or that may impact the son if the father elects to run for Council leadership?

II. Question:

Are the nepotism prohibitions of Florida Statute, Section 112.3135 violated if a member of the City of Jacksonville, City Council is elected by his peers on the collegial body to be president or vice president of the Council, when his relative is also a voting member of the collegial body?

III. Answer:

No. First, there are no prohibitions in Florida Statutes Chapter 112 that would impact the son if he were to run for Council leadership himself. He would get to seek the office, advocate for his election and vote in favor of himself for that leadership position.

Also, while a cursory review of Florida Statute § 112.3135 could lead one to conclude that it restricts public officials from appointing, employing, promoting, or advancing relatives—or advocating for such actions—in positions within the agency where they serve or exercise jurisdiction, a deeper review of the text of the rule argues otherwise. To begin, a brief review of the defined terms is in order: a "relative" includes a father and a son, and a "collegial body" covers entities like the Jacksonville City Council, where authority is shared equally among its 19 members. Furthermore, the statute explicitly states: "An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment... is made by a collegial body of which a relative of the individual is a member."

Here, the City Council elects its president and vice president annually in May for a one-year term starting July 1, which qualifies as an appointment or advancement to a leadership position within the City agency. Since both father and son are council members, the election by the body to elect either father or son as Council leaders could conceivably violate this prohibition. The statute provides no exception for peer elections, abstentions, or non-advocacy by the relative, as confirmed by amendments in response to *Galbut v. City of Miami Beach* (605 So. 2d 466, Fla. 3d DCA 1992) and Florida Commission on Ethics Opinion CEO 96-5, which prohibit such appointments even if the relative abstains. Exceptions in § 112.3135(2)(a), like those for small municipalities or volunteers, do not apply to Jacksonville (population over 35,000) or elected leadership roles.

However, the Florida Commission on Ethics should consider the following, and in doing so, issue an advisory opinion finding that no violation of Florida Statute § 112.3135 (the anti-nepotism statute) occurs in the scenario where a member of the Jacksonville City Council is elected by his

peers to Council leadership, even though his relative is also an elected member of the same Council.

This is so based on a plain reading of the text of the statute, as well as its legislative intent, coupled with clear distinctions from prior Commission opinions and express guidance provided by the Florida Legislature in Florida Statute § 112.316. Additionally, there are constitutional considerations under both the Florida and U.S. Constitutions. The unique context of an internal, peer-elected leadership role within a single collegial body composed entirely of publicly elected officials—not an appointment or advancement to a separate agency or subordinate position – is key in contrasting the usual import of the rule.

A. Statutory Interpretation: The Election to Council Vice President Does Not Constitute an "Appointment, Promotion, or Advancement" Under § 112.3135

Florida Statute § 112.3135(2)(a) prohibits a public official from appointing, employing, promoting, or advancing a relative (including a father or son) "in or to a position in an agency" where the official serves or exercises jurisdiction. It further bars such actions when made by a "collegial body" of which a relative is a member. However, pursuant to the guidance provided in Florida Statute § 112.316, this language must be interpreted narrowly to avoid overbroad application that disrupts the internal democratic functions of elected bodies and the "full and faithful discharge" by the Council members of their legislative duties to the City of Jacksonville.

- **Not a Separate "Position in an Agency":** The Jacksonville City Council operates as a single collegial body under the city's consolidated charter (Jacksonville Ordinance Code, Chapter 5), where all members are equals, publicly elected to identical council seats. The Council leadership is elected annually from among these peers, but it entails no new employment, no additional staff authority, and no transfer to another agency. The Council members are duty-bound by law to vote for their leadership each year. Such annual, one-year term leadership roles is not an elevation of one Council member's statutorily defined obligations and status over others, but a "first" among equals to guide the collegial body through the subsequent Council year of agendas, meetings, action items and budgetary decisions. It is merely an annual, internal designation, akin to rotating chairmanships in committees—not a permanent "promotion" or "advancement" to a different role. Once the Council president or vice president has served their year, they revert back to being a "regular" Council member. Courts have emphasized that statutes like this should be construed strictly against expanding government restrictions (see, e.g., general principles in *State v. Warren*, 558 So. 2d 55 (Fla. 1990), affirming narrow interpretation of ethics laws). While Commission opinions often opine on potential violations in collegial body actions (e.g., CEO 13-7 on elevating a relative to full-time employment; CEO 90-58 on advisory boards), none directly address internal peer-election leadership among duly-elected officials. These opinions involve hierarchical advancements or external appointments, where the relative gains new authority or benefits. In contrast, Council leadership elections are a temporary, rotational role without such gains, making it distinguishable. The Commission should opine narrowly, as it has in cases like CEO 19-24 (salary increases for relatives), limiting application to clear favoritism risks.
- **Distinction from External Appointments:** Florida Statute § 112.3135's collegial body clause is aimed at preventing the body from appointing relatives to external or subordinate

positions (e.g., advisory boards, other boards within their jurisdiction or staff roles), where favoritism could undermine merit-based selection. Here, the election is wholly internal, among members already vetted and elected by the public. It does not "advance" the father or son "to" a position in the agency because they are already in the agency via public election. Interpreting it otherwise would absurdly imply that any internal vote assigning tasks (e.g., committee assignments) could trigger nepotism violations if relatives serve together—a result not supported by the statute's text or purpose.

- **No "Advocacy" or Control by the Relative:** Even if the father's membership on the Council triggers scrutiny, the statute requires advocacy or action by the official. In a 19-member council, each relative's single vote (or abstention) does not control the outcome, and the election reflects the collective will of peers. This dilutes any notion of nepotistic influence, distinguishing it from scenarios where a relative has direct hiring authority.

B. Legislative Intent: The Statute Targets Favoritism in Hiring and Subordinate Roles, Not Democratic Leadership Selection Among Elected Peers

The anti-nepotism law was enacted to promote public trust by preventing officials from using their positions to favor relatives in employment or appointments that bypass public accountability (*see* legislative history from Ch. 74-177, Laws of Fla., emphasizing "abuse of public office"). It is not intended to interfere with the internal governance of elected collegial bodies, where all members (including relatives) have been independently chosen by voters and in which all members have individual voting power equal in weight to that of the other Council members.

- **Context of Amendments:** The 1993 amendment post-*Galbut v. City of Miami Beach* (605 So. 2d 466 (Fla. 3d DCA 1992)) closed a loophole allowing abstention in appointments to advisory boards, but that case involved external appointments, not internal leadership. Commission opinions like CEO 96-5 (prohibiting appointment of a commissioner's husband to an advisory board) and CEO 09-15 (advisory board nominations) consistently address subordinate or external roles, not peer-elected leadership within the same body. Extending these to internal elections would exceed legislative intent, potentially chilling family participation in public service—a concern not addressed in the statute's history.
- **Municipal Context:** Jacksonville's charter was adopted as a state law by the Florida Legislature, most recently in Laws of Florida, ch. 92-341. Jacksonville's charter (Art. 5, Sec. 5.07) mandates peer election of council officers, reflecting local democratic norms. Jacksonville's charter (Art. 5, sec. 5.08) also establishes that the Council shall determine its own rules and shall annually select a president and vice president "from its members". Applying § 112.3135 here would create a conflict with home rule principles, as the statute provides exceptions for small municipalities (under 35,000 population) but none for larger ones like Jacksonville—yet it does not explicitly override charter-based internal processes. Furthermore, an interpretation of § 112.3135 to not allow the father or son to run for a Council leadership position while the other relative remains a Council member would impermissibly restrict the eligible pool of Council members available for leadership, as directed by the Council's charter mandate.

C. Impact of Sec. 112.316 Construction, Florida Statutes

Guidance regarding interpretation and application of § 112.3135 is readily found in § 112.316.

which prohibits construction of Chapter 112, Part III in such a manner as to prevent any officer from following any pursuit which does not interfere with the full and faithful discharge by such officer of his or her duties to the city. As mentioned above, the Jacksonville City Council is a 19-member body elected by the qualified voters of Duval County to perform all legislative actions for the city. While case law interpreting § 112.316 has largely focused on its application in the realm of non-government employment outside the duties of the public official, the precise language of § 112.316 makes it applicable to both “accepting other employment **or following any pursuit . . .**”, making its application broader than traditional employment opportunities. The Legislature’s intent is simple to understand – so long as other pursuits sought by the public official do not interfere with the full and faithful discharge of such official’s public duties, interpretations of Part III must not prevent such pursuits. “Pursuit” is not defined in Part III but it is clearly separate from, and in addition to, “employment”.

An interpretation of § 112.3135 to prohibit an individual from serving on the Council while his relative is independently elected as Council president or vice president violates § 112.316. Not only does it prohibit the non-office-seeking relative from voting for the candidate of his choice, it also interferes with the ability of the other 18 Council members from being able to vote on the candidate of their choice without creating a violation. That interpretation effectively eliminates from Council leadership consideration two of its otherwise eligible members.

Each Council member has a duty, once per year, to elect the Council’s leadership from within its membership. While the current composition of the Council only contains 2 relatives, expanding the problem to a nearly-absurd (but still legally permissible) possibility, if all 19 Council members were relatives, this interpretation of § 112.3135 would deprive the Council of all leadership. Application of § 112.3135 to prohibit the potentially best candidate available for Council leadership from being elected would interfere with the full and faithful discharge of both the relatives and the other Council members of their duties to the City and its electorate.

The application of Section 112.316 in this circumstance is wholly appropriate and precisely what this particular statute was designed to alleviate – avoidance of a hyper-technical reading of the rule which results in an absurd outcome achieving no ethical or moral outcome. The nepotism rules were intended for a variety of relative-related decision-making actions which result in pecuniary gain or loss for a family member, not the prohibition of a duly-elected collegial body seeking to place a person of its choice in a transitory parliamentary chairperson position for a fixed time period, as it rotates to the next peer-selected one, each year.

D. Florida Constitutional Issues: Home Rule and Equal Protection

- **Municipal Home Rule (Fla. Const. Art. VIII, § 2(b)):** Florida's Constitution grants chartered municipalities like Jacksonville broad authority to govern internal affairs, including Council organization, unless preempted by general law. Section 112.3135 does not expressly preempt charter provisions for electing officers (Jacksonville Charter, Art. 5), and applying it here would unconstitutionally intrude on local self-governance. Courts have invalidated state overreach in similar contexts (e.g., *City of Miami Beach v. Fleetwood Hotel*, 261 So. 2d 801 (Fla. 1972), protecting home rule from implicit preemptions).

Equal Protection and Basic Rights (Fla. Const. Art. I, §§ 2, 9): The statute, as applied, discriminates against Council members based solely on familial relationships, without a substantial relation to preventing corruption. Both father and son were independently elected by voters, who presumably knew of their relation. Barring the two from leadership eligibility creates an arbitrary classification, violating equal protection by disqualifying qualified individuals without due process. This could deter families from running for office, undermining the right to seek public service.

E. Federal Constitutional Arguments: Equal Protection, Due Process, and First Amendment

- **Equal Protection Clause (U.S. Const. Amend. XIV):** Nepotism laws are generally constitutional when rationally related to anti-corruption goals (see *Kotcher v. Rosa & Sullivan Appliance Ctr.*, 957 F.2d 59 (2d Cir. 1992)), but application here lacks rationality. It treats similarly situated Council members differently based on family ties, without evidence of heightened corruption risk in peer-elected leadership. Federal courts have struck down overbroad restrictions on public officials' rights (e.g., *Clements v. Fashing*, 457 U.S. 957 (1982), invalidating barriers to office-holding).
- **Due Process Clause (U.S. Const. Amend. XIV):** The statute is unconstitutionally vague as applied, failing to provide fair notice that an internal peer election constitutes "advancement." Public officials deserve clarity in ethics laws to avoid arbitrary enforcement.
- **First Amendment (U.S. Const. Amend. I):** Council members' votes in leadership elections are protected political expression and association. Prohibiting the election due to a relative's presence burdens this right without compelling justification, as the process is transparent and accountable to voters (see *Republican Party of Minn. v. White*, 536 U.S. 765 (2002), protecting political speech elections).

IV. Conclusion:

The requester respectfully requests that for all these reasons, the Commission issue an advisory opinion that § 112.3135 is not violated in this instance, as the election of Council leadership represents an internal democratic function among publicly elected equals, not the type of favoritism the statute targets. This interpretation preserves legislative intent, is consistent with § 112.316, avoids absurd results, and upholds constitutional principles. If applied otherwise, it risks unconstitutional interference with local governance and individual rights, potentially leading to judicial challenge. The Commission has authority to provide such guidance under § 112.322(3)(a), promoting ethical clarity without overregulation.