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"A Public Office is a Public Trust"

MEMORANDUM

TO: Commission Members

FROM: Kerrie Stillman, Deputy Executive Director 

SUBJECT: Legislative Plan and Recommendations for 2022

DATE: August 25, 2021

The 2022 Legislative Session begins January 11 and committee weeks begin the week of September 20. In fulfillment of your statutory mandate to make recommendations for the upcoming session, included with this memo as a starting point for discussion are your recommendations from last session. I also noted an issue staff identified, related to recent changes to the application of the ethics training requirement.

Two underlying issues to consider as you consider legislative recommendations are: 1) whether, and to what degree, you want to take positions on issues other than those in your legislative recommendations; and, 2) who should have the authority to speak for the Commission.

Any number of proposals, large and small, beneficial and detrimental, come up during the legislative session. Committee staff are often interested in the Commission's position, and I get bill analysis requests asking for comment on both policy and fiscal impact. Most times, I have to respond that the Commission has not taken a position; all I can do is state what I think the practical effects of the measure would be.

It makes sense for the Commission to state its position on legislation affecting the Commission or the Code, and doing so would likely give the Commission a greater legislative presence. The only downside I can foresee is that the Commission may be criticized for, or called upon to defend, its position. For example, if it expresses a view that a proposal is too draconian, it may be criticized for being "soft" on ethics.

As to the second issue, sometimes in the past the Commission has authorized a member to act as Legislative Liaison to speak for you, and that has been very helpful. If the Commission chooses to be more vocal on more issues, this authority will be much more important. The responsibility for the Liaison will also be much greater, as there is always the possibility that one or more Members may have a different view of an issue than the position voiced by the Liaison.

I genuinely appreciate your interest, and look forward to your discussion and guidance.

If there are other issues you would like us to research prior to the Commission meeting, please let me know.

2021 Legislative Recommendations

Conflicts of Interest

The law prohibits an official from having a contractual relationship with a company doing business with the official's own agency. So City Councilman A cannot contract with Business B, if Business B is doing business with his City. But if Councilman A creates "A, Inc.," that corporation can do business with Business B without violating the law, even if "A, Inc.," is solely owned by Councilman A. The Commission has seen this as thwarting the underlying goal of the law, which is to prevent officials from having relationships with companies doing business with their agencies.

Voting Conflicts Law

Under current law, local elected officials can participate in the discussion of a measure in which they have a conflict without revealing the existence of that conflict until the vote is actually taken. This means the official can make every effort to persuade his or her colleagues without telling them (and the public) about the conflict. Appointed officials, in contrast, must declare their conflict before participating in the discussion of the measure. Elected officials should have to adhere to the same standard.

In addition, state officers only have to abstain if the measure helps or hurts them personally. Unlike local officials, they do not have to abstain when the measure benefits their employer, relative, etc.

The Commission has expressed that the voting conflict standard should be the same for everyone, whether the official is appointed or elected and whether the official is a state or local official; and that the exemption from using the Commission's conflict disclosure form applicable only to Legislators be eliminated.

Enhanced Financial Disclosure for Local Elected Officials

Elected municipal officials are very important and administer vast amounts of public resources. For these, and other reasons, their disclosure should be on par with that of county officials and

others who file Form 6, rather than Form 1. The Commission believes the enhanced disclosure should be applied to all elected municipal officials regardless of the population of the municipality.

Dismissal of Complaints Alleging de minimis Financial Disclosure Violations

Section 112.324(11), Florida Statutes, currently allows the Commission to dismiss complaints alleging de minimis violations attributable to inadvertent or unintentional error, except for financial disclosure complaints. The Commission believes the statute should be amended to allow for dismissal of financial disclosure complaints, too.

Dismissal of Lobbying Firm Audit matters

Section 112.324(12), Florida Statutes, which allows the Commission to dismiss complaints when it finds that the public interest would not be served by proceeding further on the complaint, currently is not available for dismissal of lobbying firm audit matters under Section 112.3215, Florida Statutes, even when circumstances justify such a dismissal. The Commission recommends amending Section 112.324(12) to allow for dismissal of audit matters.

Increase of Civil Penalties

Currently, the law provides for a maximum fine of \$10,000 for a violation of the ethics laws. This amount has not been increased since 1994. Due to inflation and seriousness of ethics offenses, the Commission believes the maximum fine amount should be increased.

Whistle Blower-like Protection for Ethics Complainants

The Commission believes that the threat of adverse employment or personnel actions in retaliation for a person's filing of an ethics complaint discourages the filing of valid complaints. Thus, the Commission seeks the enactment of protections or remedies, akin to those in the "Whistle-blower's Act," Sections 112.3187-112.31895, Florida Statutes, for the benefit of ethics complainants.

Representing Clients Before One's Own Board

The Commission has opinions as early as 1977 and even since 2020 interpreting Section 112.313(7), Florida Statutes, to say, in essence, that if a person serves on a board, he cannot represent clients before that board, and neither can other members of his professional firm. This interpretation is similar to the Rules of Professional Conduct of the Florida Bar, which impute the conflict of one lawyer to all lawyers in the firm. The Commission views this as an important public protection, and opposes any relaxation of this standard.

Gifts, Expenditures, or Compensation from Lobbyists

The Commission opposed HB 1435 and SB 1490 in the 2020 session. These bills, which did not pass, would have allowed donations from lobbyists or their principals, *unlimited in amount*, to

certain public employees and appointed public officials if the donations were used toward costs associated with serious injury, disease, or illness of the employee, appointed officer, or his or her child. Such a vast exemption to the gift and expenditure laws, aimed at public officials when they are most vulnerable to undue influence from special interests, would seriously undermine effective restrictions and prohibitions which have protected the public trust for many years. The Commission continues to oppose an unlimited exemption to the gift and expenditure laws.

Additional Issue Identified By Staff

Section 112.3142(2)(e), F.S., provides that a constitutional officer or elected municipal officer assuming a new office or new term of office after March 31 is not required to complete ethics training for the calendar year in which the term of office began. In 2019, Section 112.3142, F.S., was amended, adding Section 112.3142(2)(c) which requires commissioners of community redevelopment agencies to complete 4 hours of ethics training. However, they were not included in the temporary exemption language contained in (2)(e), which means that CRA board members would be required to take the four hours of training, even if they started their term in December.