

Florida Commission on Ethics

CEO 10-21 – September 8, 2010

SUMMARY POINT: SAC members voting on A+ Awards are NOT presented with a “Conflict of Interest” (see details contained herein) unless voting on a proposed agreement between the member’s private business and the school.

**VOTING CONFLICT
SCHOOL ADVISORY COUNCIL MEMBERS VOTING ON MATTERS**

To: Name withheld at person's request (Palm Beach County)

SUMMARY:

Advice is provided regarding members of school advisory councils as to voting on the distribution of the school's "A plus" recognition funds or school improvement funds, when the advisory council member might benefit. CEO 00-2 is referenced.¹

QUESTION:

Would members of school advisory councils be presented with voting conflicts under Section 112.3143, Florida Statutes, in various situations?

This question is answered as set forth below.

By your letter of inquiry, we are advised that you write in behalf of the Palm Beach County School District's Superintendent of Schools, ..., in order to provide guidance to District school principals and others serving on school advisory councils (SAC) within the District. Further, you advise that by statute² all public schools are required to have a SAC, which is composed of the school's principal, a balanced number of teachers and other employees of the school, parents, students (for high schools and middle schools), members of the community, and business persons. In addition, you advise that pursuant to the statute, the role of a SAC includes assisting in the preparation and evaluation of the school improvement plan (SIP), jointly approving with school teachers use of "A plus" school recognition program funds, approving funds for developing and implementing the SIP, and performing functions prescribed by regulations of the district school board. Also, you advise that a portion of funds provided in the Legislature's general appropriations act for use by SACs must be used for implementing SIPs, and that district school boards shall annually approve and require implementation of a new, amended, or continuation SIP for each school in a district.

Additionally, you advise that, pursuant to statute,³ the Florida School Recognition Program provides funds to recognize schools that earn an "A" rating, and that all public schools, including some charter schools, are eligible to participate in the Program. Sections 1008.36(4) and (5), Florida Statutes, provide:

(4) All selected schools shall receive financial awards depending on the availability of funds appropriated and the number and size of schools selected to receive an award. Funds must be distributed to the school's fiscal agent and placed in the school's account and must be used for purposes listed in subsection (5) as determined jointly by the school's staff and school advisory council. If school staff and the school advisory council cannot reach agreement by November 1, the awards must be equally distributed to all classroom teachers currently teaching in the school.

(5) School recognition awards must be used for the following:

- (a) Nonrecurring bonuses to the faculty and staff;
- (b) Nonrecurring expenditures for educational equipment or materials to assist in maintaining and improving student performance; or
- (c) Temporary personnel for the school to assist in maintaining and improving student performance.

Thus, the Superintendent inquires⁴ whether SAC members would be presented with a voting conflict under Section 112.3143, Florida Statutes, as to the several situations⁵ listed below:

1. SAC member who is a teacher or educational support employee voting on distribution of the school's "A plus" recognition funds when the member (as a teacher/support employee) would receive a share of the funds?
 2. SAC member who is the principal voting on distribution of the school's "A plus" recognition funds when the member (as principal) would receive a share of the funds?
 3. SAC member who is a teacher voting on use of such funds, or on use of school improvement funds, to provide professional training for the teacher or for teachers at the school, or
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to buy instructional materials or technology for the teacher's classroom or for teachers' classrooms at the school?

4. SAC member/principal voting on use of such funds, or on use of school improvement funds, for a school project the principal wants to accomplish?

5. A parent member, school employee member, or community member of a SAC voting on a proposed agreement between the member's private business and the school? .

Sections 112.3143(3)(a) and 112.3143(4), Florida Statutes, the portions of the voting conflicts law applicable to local, appointed public officers, such as members of SACs,⁶ provide, respectively:

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 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.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer 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; 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, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum

shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term 'participate' means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

Both statutes are triggered when a measure/vote/matter would inure to the special private gain or loss of the public officer (i.e., the SAC member) or to that of any person or entity standing in an enumerated relationship to the officer (e.g., private employer/client, relative, business associate). Section 112.3143(3)(a) requires the officer's declaration, abstention from voting, and timely filing of CE Form 8B (memorandum of voting conflict) as to such items; Section 112.3143(4) requires certain disclosures and actions (see the instructions on Form 8B for appointed officers) regarding "participation" concerning such items.

As to situation "1," SAC member who is a teacher or educational support employee voting on distribution of the school's "A plus" recognition funds when the member (as a teacher/support employee) would receive a share of the funds, we find that the member would not be presented with a voting/participation conflict. While, in the situation presented, the SAC vote would be part of a process causing gain or loss to the member who would be part of the group of similarly situated persons receiving a share of the funds, we do not find that the gain or loss would be "special." Under the situation described, all teachers and educational support employees at a school (not just the teacher/support employee on the SAC) would share in distribution of the recognition funds. In addition, we find that under the SAC/recognition funds statutory framework, the Legislature appears to have intended that faculty/staff be a part of the membership of SACs and, also, that they would receive recognition funds, thereby buttressing our decision herein. Of course, our finding assumes that the funds would be distributed to all, or virtually all, of the faculty/staff, under a uniform criteria or formula, and that the SAC would not, for example, take votes as to particular persons or customized amounts.⁷

We do not find that the situation described herein is within the scope of Section 112.313(5), Florida Statutes, which provides:

SALARY AND EXPENSES.—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. No local government attorney shall be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.

This is so because Section 112.313(5) requires that the salary, expenses, or other compensation voted upon be received in the voting person's capacity "as a public officer," and not in another capacity. That is, Section 112.313(5) would allow a SAC member (if SAC membership were a paid position) to vote on an allowable increase of his or her SAC salary, but would not apply to allow a vote to direct "A plus" money to the SAC member in his or her other capacity (the capacity of, for example, a teacher). Section 112.313(5) is an exemption to a prohibition, and, as such, must be strictly (narrowly) construed. *State v. Nourse*, 340 So. 2d 966 (Fla. 3d DCA 1976). However, we find that the purpose of the statutory framework surrounding SACs is akin to the purpose of Section 112.313(5). That is, we find that, just as the Legislature intended via Section 112.313(5) that officers be able to properly direct public moneys to their public officer compensation, that the Legislature also intended, via Sections 1001.452(1)(a) and 1008.36(4) and (5), Florida Statutes, that SAC members be able to direct public (A plus) moneys to school staff generally pursuant to Sections 1008.36(4) and (5), notwithstanding that a SAC member would, as a member of the school's staff, receive a staff allocation of the moneys. Clearly, Section 1001.452(1)(a) mandates that SACs include principals, teachers, and education support personnel (persons who might receive moneys), and clearly Sections 1008.36(4) and (5) contemplate that SACs (collegial bodies operating via voting) play a role in distributing moneys to groups including teachers and other school staff. Sections 1008.36(4) and (5) are set forth above, and Section 1001.452(1)(a) provides, in part, that

[e]ach advisory council shall be composed of the principal and an appropriately balanced number of teachers, education support employees, students, parents, and other business and community citizens who are representative of the ethnic, racial, and economic community served by the school.

As to situation "2" [SAC member who is the principal voting on distribution of the school's "A plus" recognition funds when the member (as principal) would receive a share of the funds], under the reasoning set forth regarding situation "1," we find that the member would not be presented with a voting/participation conflict. Similarly, this finding is dependent on there

being no vote or consideration by the SAC as to the particular case of, or any customized amount for, the voting member.⁸

As to situation "3" [SAC member who is a teacher voting on use of funds to provide professional training for the teacher or for teachers at the school, or to buy instructional materials or technology for the teacher's classroom or for teachers' classrooms at the school], we find that the member would not be presented with a voting/participation conflict. The gain/loss (effect) in this situation would inure to the school, a public entity, via the professional improvement of the school's agent, the teacher, or via enhancement of the public entity's classrooms.⁹

Regarding situation "4" [SAC member-principal voting on use of funds for a school project the principal wants to accomplish], we find, under the reasoning of situation "3," that no voting/participation conflict would be presented.

And, as to situation "5" [a parent member, school employee member, or community member of a SAC voting on a proposed agreement between the member's private business and the school], we find that a voting and participation conflict, requiring compliance with Sections 112.3143(3)(a) and (4), Florida Statutes, would be created. The effect of the matter/vote would be "special" as to the member.

Accordingly, the answers to your various inquiries are provided above .

ORDERED by the State of Florida Commission on Ethics meeting in public session on September 3, 2010 and **RENDERED** this 8th day of September, 2010.

Roy Rogers, *Chairman*

^[1] Prior opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us) or may be obtained directly from the Commission.

^[2] Section 1001.452, Florida Statutes

^[3] Section 1008.36, Florida Statutes.

^[4] In addition to the information provided in your letter of inquiry, you, along with a school improvement specialist of the District, informed us, via a conference telephone call with our staff, that the District has yet to have had a situation in which a SAC and the school's staff have failed to agree (determine jointly) as to distribution of recognition funds; that at most District schools principals and other administration members do not share in such funds; that a school's staff decides by ballot how it would like to see funds distributed, and then the school's SAC can accept the staff's view, reject the staff's view, or arrive at the SAC's own view; but that lack of agreement would result in the "statutory default" equal distribution to all classroom teachers currently teaching at the school. Further, via the call, you and the specialist advised that historically SACs have entertained measures such as "I move to accept the school's staff's view of distribution, "I move to reject it," or "I move a distribution of X dollars for each teacher and X dollars for each support employee"; and that, historically, neither of you know of SAC measures such as "I move \$500 for teacher Y and \$1,000 for teacher Z."

[5] The phrasing/numbering herein of the situations (questions) has been slightly restated from that of your inquiry.

[6] Previously, we found in CEO 00-2 that members of school advisory councils, although not denominated under State financial disclosure law as "local officers" (and, therefore, not required to file financial disclosure), were "public officers" subject to provisions of Sections 112.3143 (the voting conflicts law) and 112.313, Florida Statutes, notwithstanding that they were members of an advisory body. We do not retreat herein from the view that members of SACs are subject to Sections 112.3143 and 112.313; and we note that the moving of the SAC law from then Section 229.58, Florida Statutes, to the current Section 1001.452, Florida Statutes, was without effect as to wording relevant for our continued recognition that such members are "public officers."

[7] While many of our prior decisions have, depending on the particular facts presented, resulted in our finding no "special" gain or loss when the voting member's interest constituted less than one percent of the affected class, the statute prescribes no particular percentage threshold. Rather, we have engaged in case-by-case determinations, declaring as to the particular facts presented.

[8] For example, we find that a single vote/measure to award a certain amount of money to teachers, a certain amount of money to the principal, a certain amount of money to assistant principals, and a certain amount of money to education support employees would not create a voting/participation conflict; however, we find that a separate vote/measure to award a certain amount of money to the principal would create a conflict.

[9] To the extent it could be argued that use of funds for professional training/technology for classrooms causes a loss of bonus/pay funds potentially available for teachers, we find that such would not be "special."

[10] In addition, entry into such an agreement likely would create additional conflicts for the member under Sections 112.313(3) and 112.313(7)(a), Florida Statutes, absent applicability of an exemption under Section 112.313(12), Florida Statutes.