

**Subject:** Records Request  
**Date:** Tuesday, December 20, 2022 at 8:26:56 AM Eastern Standard Time  
**From:** Blais, Lynn  
**To:** AO Records  
**Attachments:** 21053 Complaint.PDF, 21053 Public Report and Order Dismissing Complaint.PDF, 21063 Complaint.PDF, 21063 Public Report and Order Dismissing Complaint.PDF, 22162 Complaint.PDF, 22162 Public Report and Order Dismissing Complaint.PDF, 220308 Shillinger.pdf, 2791 Shillinger Draft 1b.docx, Letter.pdf

EXTERNAL SENDER

Please find all responsive records from your records request regarding Governor Ron DeSantis. If you have questions, please let me know.

Lynn Blais  
Florida Commission on Ethics  
(850) 488-7864



# COMPLAINT

## 21-053

RECEIVED  
 ORIGINAL

**1. PERSON BRINGING COMPLAINT:**

Name: Mary Conway Telephone Number: 941-447-2226  
 Address: 4615 Park Lake Ter S.  
 City: Bradenton County: Manatee State: FL Zip Code: 34209

**2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:**

Use a separate complaint form for each person you wish to complain against: 850-717-9337  
 Name: Ron DeSantis Telephone Number: 866-779-6121  
 Address: The Capitol  
400 Monroe St.  
 County: Leon City: Tallahassee Zip Code: 32399  
 Title of office or position held or sought: Florida Governor

**3. STATEMENT OF FACTS:**

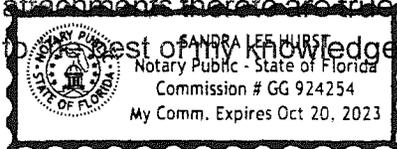
Please provide a full explanation of your complaint, describing the facts and the actions of the person named above and why you believe he or she violated the law. Include relevant dates and the names and addresses of persons whom you believe may be witnesses. Please do not submit more than 15 pages, including this form. Please do not submit video or audio tapes, CDs, DVDs, flash drives or other electronic media; such material will not be considered part of the complaint and will be returned.

**4. OATH**

STATE OF Florida  
 COUNTY OF Manatee

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this 25 day of February, 2021, by Mary F. Conway (name of person making statement)

I, the person bringing this complaint, do swear or affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief.



SIGNATURE OF COMPLAINANT

Mary F. Conway

Sandra Lee Hurst  
 (Signature of Notary Public)  
Sandra Lee Hurst  
 (Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known X OR Produced Identification X  
 Type of Identification Produced: Both FL Drivers License

MAR 01 2021

RECEIVED

February 26, 2021

To Whom It May Concern,

I am filing this complaint against Ron DeSantis, Governor of the state of Florida, for the action he took setting up a pop up vaccine clinics around the state. These clinics have been designated to serve the wealthy and especially wealthy residents that have contributed to his political campaign. These pop up clinics only allowed the residents from certain zip codes to easily register for a vaccine appointment. These zip codes cover the wealthiest areas of Manatee, Hardee, Sarasota and Charlotte counties.

I have been trying for two months now to obtain the Covid vaccine, but have been unsuccessful. I am nearly 69 years old, still working and suffering health issues. I feel that the Governor has exhibited a blatant abuse of power by directing the vaccine to his supporters. I was under the impression that the vaccine was not for sale; Governor De Santis has exhibited behavior that indicates that he believes the vaccine can be bought with a political donation to him. His actions are an abuse of power and an ethical violation of the oath he took.

Our elected state officials take an oath to SERVE their constituents, all of them. Governor De Santis chose to favor his wealthy donors. This behavior needs to be investigated by the Florida Commission on Ethics as it is not becoming of someone that took an oath as a public servant to serve the residents of Florida.

Thank you for taking the time to consider the matter I have put before you. Please ensure that our government works for the people and investigate this issue.

Sincerely,



Maty F. Conway

Registered Voter

4615 Park Lake Ter. S.

Bradenton Fl 34209 Manatee County, FL

BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

In re RON DESANTIS, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

Complaint No. 21-053

**PUBLIC REPORT AND ORDER DISMISSING COMPLAINT**

On Friday, April 16, 2021, the Commission on Ethics met in its executive session and considered this complaint for legal sufficiency pursuant to Commission Rule 34-5.002, F.A.C. The Commission's review was limited to questions of jurisdiction of the Commission and of the adequacy of the details of the complaint to allege a violation of the Code of Ethics for Public Officers and Employees. No factual investigation preceded the review, and therefore the Commission's conclusions do not reflect on the accuracy of the allegations of the complaint.

The Commission voted to dismiss the complaint for lack of legal sufficiency, based on the following analysis:

1. This complaint was filed by Mary Conway of Bradenton, Florida.
2. The Respondent, Ron DeSantis, serves as Governor of the State of Florida.
3. The complaint claims the Respondent has set up vaccine clinics across the State that only allow residents from certain zip codes to register for vaccine appointments. The complaint alleges the Respondent set up the clinics in these zip codes because the individuals residing there are wealthy and include individuals who have contributed to his political campaign.
4. The only Code of Ethics provision<sup>1</sup> arguably applicable to the allegations in paragraph 3 is Section 112.313(6), Florida Statutes, which states:

<sup>1</sup> Because the complaint does not allege in a factual, nonconclusory manner that the Respondent was attempting to benefit himself, his spouse, children or employer, or any business with which

MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

Section 112.312(9), Florida Statutes, defines "corruptly" as

. . . done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

5. The allegations in paragraph 3 fail to indicate a possible violation by the Respondent of Section 112.313(6). In order to indicate a possible violation of this provision, a complaint must substantively allege that a respondent corruptly used or attempted to use his public position or resources within his public trust, or that he corruptly performed his official duties, in order to *benefit* himself or another. Here, even assuming the Respondent was involved in setting up the vaccine clinics, and even assuming the clinics are in wealthier communities, the complaint does not indicate, in a factual, nonconclusory manner, any private capacity benefit to the Respondent, or to any individual with whom he had a private capacity nexus, as would be supportive of the "corruption" required under the statute. We acknowledge the complaint does allege the Respondent was attempting to benefit "the wealthy" or "wealthy residents that have contributed to his political campaign." However, without more detail, the broad assertion that the Respondent was attempting to benefit the wealthy or wealthy campaign donors is conclusory; and while material assertions of fact are taken as true in an analysis of legal sufficiency, conclusions or unwarranted deductions of fact are not a sufficiently specific basis for investigation.

Accordingly, this complaint is hereby dismissed for failure to constitute a legally sufficient

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he contracts, in which he is an officer, partner, director, or proprietor, or in which he owns an interest, the allegations do not trigger the prohibition currently found in Article II, Section 8(g)(2) of the Florida Constitution.

complaint with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on Friday, April 16, 2021.

April 21, 2021  
Date Rendered

   
JoAnne Leznoff  
*Chair, Florida Commission on Ethics*

JL/gps

cc: Mr. Ron DeSantis, Respondent  
Ms. Mary Conway, Complainant

ORIGINAL



Florida Commission on Ethics
P. O. Drawer 15709, Tallahassee, Florida 32317-5709
"A Public Office is a Public Trust"

FLORIDA COMMISSION ON ETHICS

MAR 17 2021

RECEIVED

COMPLAINT 21-063

1. PERSON BRINGING COMPLAINT:

Name: JOSEPH WEINZETTLE Telephone Number: (727) 741-0385
Address: 63381 POLLY DRIVE
City: TAIRPON SPRINGS County: PINELLAS State: FL Zip Code: 34689

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

Use a separate complaint form for each person you wish to complain against:

Name: RON DESANTIS Telephone Number: (850) 717-9337
Address: 400 S. MONROE ST.
City: TALLAHASSEE County: LEON Zip Code: 32399
Title of office or position held or sought: GOVERNOR

3. STATEMENT OF FACTS:

Please provide a full explanation of your complaint, describing the facts and the actions of the person named above and why you believe he or she violated the law. Include relevant dates and the names and addresses of persons whom you believe may be witnesses. Please do not submit more than 15 pages, including this form. Please do not submit video or audio tapes, CDs, DVDs, flash drives or other electronic media; such material will not be considered part of the complaint and will be returned.

4. OATH

STATE OF Florida
COUNTY OF Pinellas

Sworn to (or affirmed) and subscribed before me by means of [X] physical presence or [ ] online notarization, this 5 day of March 20 21, by Joseph Weinzettle. (name of person making statement)

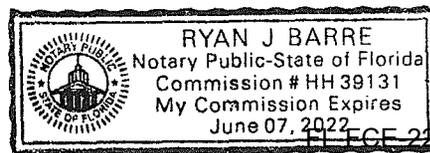
I, the person bringing this complaint, do swear or affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief.

Signature of Joseph Weinzettle
SIGNATURE OF COMPLAINANT

Signature of Ryan J Barre
(Print, Type, or Stamp Commissioned Name of Notary Public)

CE FORM 50—Effective January 9, 2017
Incorporated by reference in Rule 34-7.010(1)(b), F.A.C.

Personally Known OR Produced Identification
Type of Identification Produced: FL Drivers License



## STATEMENT OF FACTS

1. Governor Ron DeSantis provided Covid-19 vaccines to political donors, obtained benefits from this action and retaliated against officials who criticized his management.
2. In January 2021, exclusive Key Largo community Ocean Reef Club was provided Covid-19 vaccines, far in advance of the rest of the state. 17 community members donated \$5,000 to DeSantis's political committee through December 2020.
3. In February 2021, Ocean Reef Club resident Bruce Rauner gave \$250,000 to a DeSantis PAC.
4. Boca Royal Golf and Country Club in Sarasota County and Kings Gate Golf and Country Club in Charlotte County, both Pat Neal developments, received pop-up Covid-19 vaccinations.
5. Pat Neal has given \$135,000 to DeSantis's political committee since 2018.
6. On February 9, 2021, Governor DeSantis, with Manatee County Commission Chair Vanessa Baugh, Rex Jensen (a GOP donor) and Pat Neal (also a Lakewood Ranch home builder) set up a pop-up Covid-19 vaccination site that exclusively served Lakewood Ranch residents. Manatee County residents living outside of Lakewood Ranch and Baugh's district can only obtain vaccinations in a random lottery system.
7. Commissioner Baugh created a Covid-19 vaccine VIP list for the pop-up site including Jensen, his father Lawrence Jensen, two neighbors and herself. Baugh sent this list to the county Public Safety Director Jacob Saur on Monday, February 15, 2021.
8. When Manatee County commissioners criticized the pop-up vaccination for residents in the two wealthiest zip codes, Governor DeSantis threatened to take away pop-up sites from Manatee to "Sarasota next time, or Charlotte, or Pasco..."
9. Governor DeSantis used his office to provide exclusive benefits for donors, obtained political donations for official acts and retaliated against officials who criticized his management. DeSantis appears to be in violation of 112.313 (6) "Misuse of Public Position".

### Attachments:

1. March 4, 2021 Associated Press "Gov. Ron DeSantis under fire over January vaccinations at upscale enclave in the keys"
2. February 17, 2021 Politico "DeSantis defends opening vaccine pop-up in affluent, mostly white community"
3. February 18, 2021 Herald Tribune "Manatee commissioner Vanessa Baugh created vaccine priority list that included donor"
4. February 15, 2021 email from Commissioner Baugh to Director Saur

Associated Press

# Gov. Ron DeSantis under fire over January vaccinations at upscale enclave in Florida Keys

Last Updated: March 4, 2021 at 3:53 p.m. ET

First Published: March 4, 2021 at 3:51 p.m. ET

By Associated Press

Former Republican governor of Illinois with a residence at Ocean Reef Club in Key Largo, Fla., subsequently donated \$250,000 to DeSantis: reports



Ron DeSantis speaks at the opening of the Conservative Political Action Conference at the Hyatt Regency in Orlando, Fla., last week.

JOE RAEDLE/GETTY IMAGES

MIAMI (AP) — Florida Gov. Ron DeSantis and state health officials came under deeper scrutiny amid revelations that seniors in a wealthy enclave in Key Largo received hundreds of life-saving vaccinations as early as mid-January, giving ammunition to critics who say the Republican governor is favoring wealthy constituents over ordinary Floridians.

The revelations were the latest example of wealthy Floridians getting earlier access to coronavirus vaccines, even as the state has lagged in efforts to get poorer residents vaccinated.

DeSantis pushed back Thursday, saying a local hospital — not the state — was behind the

vaccinations of more than 1,200 residents of the exclusive Ocean Reef Club in Key Largo, Fla., and that the state “wasn’t involved in it in any shape or form.”

The Chicago Tribune and the Miami Herald reported that former Illinois Gov. Bruce Rauner, a Republican with a residence in the Ocean Reef subdivision, made a quarter-million-dollar campaign contribution to DeSantis after the vaccination offer to residents.

Officials from Monroe County, home to Key Largo, said the affluent club’s medical center, which is an affiliate of Baptist Health Hospital, received the vaccines through the hospital as part of the governor’s program to vaccinate communities with populations of people 65 and older. County spokeswoman Kristen Livengood said the allocations were coordinated through Baptist Health and the state of Florida.

**Key Words (January 2021):** Pressed about vaccine delays, Florida Gov. DeSantis criticizes CNN reporter’s questioning

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Revelations about Ocean Reef residents getting vaccinated were first reported by the Miami Herald.

The inequitable distribution of the COVID-19 vaccines is becoming a public relations challenge for the governor. Of the 3.2 million people who have received one or two doses of the vaccines, less than 6% have been Black, when they make up about 17% of the total population.

**Coronavirus Update:** U.S. COVID death toll above 518,000 as Biden adds voice to outrage at Texas and Mississippi for reopening

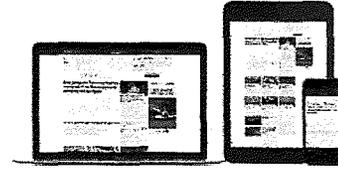
Florida Agriculture Commissioner Nikki Fried joined Democratic U.S. Rep. Charlie Crist in calling for federal officials to probe the DeSantis administration’s vaccine distribution programs.

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**What Biden’s First 100 Days Mean**

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During a Thursday press conference at the Florida state capitol, Fried called on the FBI's public corruption unit to launch an investigation.

"If this isn't public corruption, I don't know what is," Fried said, noting what she said was a pattern.

"Give campaign contributions big dollars, get special access to vaccines — ahead of seniors, ahead of our teachers, ahead of our farmworkers and so many of our residents here in our state of Florida who are scared and who are wanting vaccines."

**Don't miss: Florida's Ron DeSantis attacks media for coronavirus tinge to Super Bowl coverage**

Last week, Crist, a former governor of the state, asked the U.S. Department of Justice to look into possible favoritism in the state's distribution of the vaccines, asserting that DeSantis were benefiting "political allies and donors, over the needs of higher-risk communities and existing county waitlists."

Both Crist, a former Republican, and Fried are considering campaigns to oppose DeSantis in next year's gubernatorial election.

The Ocean Reef Club, a senior community in Key Largo, had more than 1,200 homeowners vaccinated through their second dose by late January, according to a message to community members by the management obtained by the Miami Herald.

Those vaccinations came at a time when "the majority of the state has not received an allocation of first doses," the management noted.

In recent weeks, other reports have surfaced of wealthy retirement communities getting exclusive access to vaccine doses through pop-up vaccine sites. Democrats have criticized him for choosing those places, but the governor's office has noted that more than half of them have been in Democratic stronghold counties of Broward and Palm Beach. Supporters of DeSantis say he has also coordinated clinics with faith-based groups in underserved areas.

After Publix was made the sole distributor of vaccines in Palm Beach County in late January, the mayors of predominately Black farming communities in the area urged the governor to reconsider, and the state set up a vaccine station shortly after.

**See: Rally at Ellipse that preceded Capitol siege reportedly funded by Publix heiress and aided by Alex Jones**

Even so, DeSantis during a Thursday news conference applauded the hospital network for going to the exclusive club in the Keys to vaccinate more seniors.

“My view is if you are 65 and up, I am not worried about your income bracket. I am worried about your age bracket because it’s the age, not the income, that shows the risk,” he said at the news conference. “I think it was good that they did it. I support the hospitals doing that.”

The pastor of a Hispanic church with 400 members in Homestead, Fla., not far from Key Largo, says he feels his and some other areas have been forgotten in the vaccination campaign due to technological and language barriers.

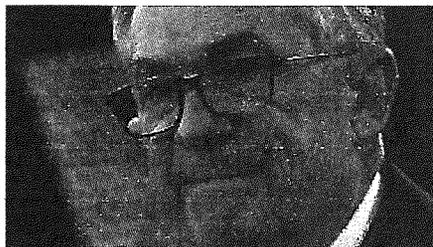
“Many people here work all day and they are not up to date with where to go and how to sign up,” said Miguel Carrillo, pastor of Iglesia Roca Fuerte.

Carrillo says many of the Guatemalan and Mexican members of his church suffer from conditions that would make them extremely vulnerable to the virus such as diabetes but they don’t have primary doctors to provide them the note they need to head to one of the federal sites.

“I wish they would give these workers a chance,” he said.

MarketWatch contributed.

**Key Words (August 2000):** [Florida Gov. Ron DeSantis likens reopening schools to killing Osama bin Laden](#)



**Powell says current policy appropriate even as bond market turmoil has caught his eye**

Federal Reserve Chairman Jerome Powell on Thursday said he would be concerned if there was persistent tightening in US

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6



Florida Gov. Ron DeSantis speaks the media at a coronavirus vaccination site at Lakewood Ranch on Wednesday in Bradenton, Fla. | Chris O'Meara/AP Photo

## DeSantis defends opening vaccine pop-up site in affluent, mostly white community

By AREK SARKISSIAN and MATT DIXON | 02/17/2021 05:33 PM EST

TALLAHASSEE — Florida Gov. Ron DeSantis traveled Wednesday to an affluent, mostly white community in Manatee County to tout a pop-up vaccination site he said would make it easier for seniors there to get the shot.

The Republican governor was already facing attacks by local officials upset he put the new “pod” in the county’s two wealthiest zip codes, even as racial disparities continue to affect the state’s vaccine rollout, and he had blunt message he wanted to deliver in person: If you don’t like it, we’ll leave.

“If Manatee County does not like us doing this, we are totally fine with putting this in counties that want it,” DeSantis said during a Wednesday news conference in Lakewood Ranch, an upscale development in the county. “If you want us to send to Sarasota next time, or Charlotte, or Pasco, let us know. We are happy to do it.”

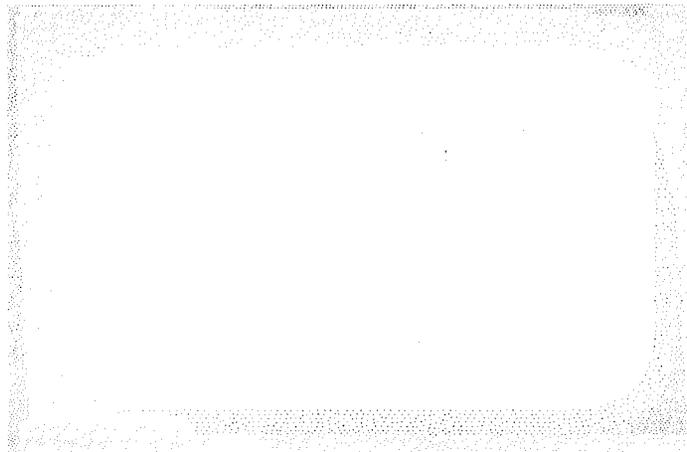
The move to set up the vaccination site in the Republican-leaning area, which was first reported by the Bradenton Herald, comes as other areas of the state run short on vaccines and as the governor ignores calls for the state to ramp up efforts to address the racial disparities. Just 5.3 percent of the vaccine doses the state has administered so far have gone to Black residents, according to state data. Nearly 17 percent of Florida's population is Black.

Black faith leaders last month said DeSantis' office did not respond to them when they put forward a plan to use a network of churches and community centers in largely Black communities to vaccinate millions of people.

After DeSantis flashed his trademark defiance on Wednesday, state Rep. Omari Hardy (D-West Palm Beach) took to Twitter to offer a "translation" of what he took DeSantis' comments to mean: "If you criticize me in my official capacity as a public official, I will withhold life-preserving resources from your community."

The process for selecting the site started with a Feb. 9 phone call from Lakewood Ranch developer and frequent GOP donor Rex Jensen, the Herald reported. Also on the line was Pat Neal, a developer who builds homes in Lakewood Ranch and is also a major donor to the Florida GOP. He has given \$135,000 to DeSantis' political committee since 2018. Neal declined to comment.

Manatee County commissioners Misty Servia and Reggie Bellamy told the Herald that the Lakewood Ranch site DeSantis selected would exclusively serve Jensen's affluent residents. DeSantis denied using zip codes to determine which communities get the vaccine first.



"It was a choice about where there's a high concentration of seniors, and where you could have communities to provide the vaccine," DeSantis said during the Wednesday press conference, which grew heated at times.

Lakewood Ranch falls under the district of Manatee County Commission Chair Vanessa Baugh, a Republican, who said during a Tuesday night public meeting she had little time to plan after DeSantis made the call to Jensen.

"We did it the best we could on a very short notice," Baugh said.

DeSantis' statewide vaccination plan gives top priority to Florida's 4.5 million residents older than age 64. Data provided by DeSantis' office shows only 29 percent of Manatee County seniors have been vaccinated so far — the fourth lowest in the state. St. Johns County had the highest number of vaccinated seniors, with 67 percent. St. Johns was followed by Leon County with 66 percent, and Wakulla County with 65 percent.

Highlands and Glades counties had the lowest percentage of vaccinated seniors at 25 percent.

Manatee County will receive 6,000 vaccine doses from the roughly 400,000 that the state expects to receive from the federal government in the next few days. DeSantis said he also expects an additional 30,000 shots to arrive, and 3,000 of them will go to the Lakewood Ranch site, DeSantis said.

More than 2.4 million people in Florida were vaccinated against Covid-19 as of Tuesday, including more than 1.8 million seniors. DeSantis said he may increase vaccine eligibility in the coming weeks as more seniors take shots.

R.B. Holmes Jr., a pastor of Tallahassee-based Bethel Missionary Baptist Church, said last month that he sent a plan to DeSantis offices to use a network of churches and community centers in predominantly Black neighborhoods as vaccination sites, but his proposal was ignored.

"For some reason, Florida is a little hesitant about working collectively, with a group of volunteers who reached out our arms and not our fists," Holmes told POLITICO. "But that's why the federal government is so important. ... If it were just states' rights, we'd still be living under Jim Crowism."

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## CORONAVIRUS

# Manatee commissioner Vanessa Baugh created vaccine priority list that included herself and donor

**Zac Anderson** Sarasota Herald-Tribune

Published 11:27 a.m. ET Feb. 18, 2021 | Updated 7:09 p.m. ET Feb. 18, 2021

Manatee County Commission Chair Vanessa Baugh was criticized by fellow commissioners Thursday for creating a priority list of people to get the COVID-19 vaccine at a clinic in Lakewood Ranch, a list that included Baugh and prominent developer Rex Jensen, inviting more concerns of favoritism in vaccine distribution.

Baugh sent an email to Manatee County's Public Safety Director Jake Saur with the names of those she wanted to get the vaccine at the pop-up clinic, which has been drawing criticism for restricting vaccinations to two wealthy ZIP codes in a community developed by a donor to Gov. Ron DeSantis.

**More:** Vaccine clinics in Lakewood Ranch and Charlotte draw complaints of political favoritism

Baugh's email raises the question of whether she abused her power to benefit herself, friends and a political donor. Jensen is the president and CEO of Lakewood Ranch developer Schroeder-Manatee Ranch, which has donated to Baugh and DeSantis.

"Madam chair, you are a friend, and I love you, but I think you have made a terrible mistake here," Commissioner Kevin Van Ostenbridge said Thursday during a discussion of Baugh's vaccine priority list.

Baugh apologized Thursday for sending the email to Saur, although she pushed back against the idea that it was a vaccine VIP list.

"Do I feel terrible about this – as it's called – VIP list, which it wasn't a VIP list? Yes I do," she said.

Baugh also complained that information in the email was released to the media. The Bradenton Herald first obtained a copy of the email, which was later obtained by the Herald-Tribune.

The email was sent with the subject line "Names for the list." It includes the names Rex Jensen, Lawrence Jensen, Robert Keehn, Marie Keehn and Baugh. It also included their addresses, birth dates and phone numbers. Lawrence Jensen is Rex Jensen's father while the Keehns are Baugh's former neighbors.

"Names for vaccination requested," Baugh wrote to Saur in the body of the email, which was sent at 12:58 a.m. on Monday.

Baugh said Thursday during a previously scheduled County Commission meeting that she spoke with Jensen and he was "very upset" his personal information was released. Jensen did not respond to messages from the Herald-Tribune Thursday.

"I just wish that some privacy could have been given to some of the people that was on the list," said Baugh, who declined to comment when approached by the Herald-Tribune during a morning break in the meeting.

The personal information, other than the names, was redacted from the copy of the email provided by the county to the Herald-Tribune Thursday.

Approached again during a lunch break and asked repeatedly why she is claiming her email didn't constitute a VIP list, Baugh told the Herald-Tribune: "I'm not going to talk to you, talk to somebody else."

Robert Keehn said in a brief interview Thursday that Baugh put his name on the priority vaccination list without his knowledge.

"We didn't know anything about it," Keehn said. "We just thought we got our regular call."

Baugh's email was roundly criticized Thursday. Commissioner James Satcher called it a "misjudgment." Commissioner Misty Servia said every county resident 65 and older is a VIP and "there should not be any other VIP list." Commissioner Carol Whitmore said "what we saw this week was a lack of judgement from our chair."

Van Ostenbridge said there should be no further deviation from the county's vaccine lottery system, which is meant to ensure everyone who signs up for a vaccine has an equal chance of getting the next available doses.

"What happened over the last few days undermines everything I've been telling my residents," Van Ostenbridge said. "Favoritism was shown and that erodes people's trust in their government."

Baugh told commissioners that she never received the vaccine and said she was walking around the office Wednesday saying, "for heaven's sake everybody, look at my arms; you can tell I didn't get a shot."

Yet Baugh's role in the Lakewood Ranch pop-up clinic was highly controversial, even before the revelation about the email she sent with the vaccine priority list.

Baugh helped organize the clinic without the knowledge of other commissioners, who quizzed her about the event Tuesday during a public meeting.

A majority of commissioners said the decision to restrict the vaccines to two wealthy ZIP codes raised concerns about favoritism, but Gov. Ron DeSantis defended the pop-up clinic during an appearance there Wednesday, saying the goal was to target an area with a large population of seniors.

Some commissioners speculated Thursday that DeSantis wasn't even aware that the clinic was serving a limited population. But while Baugh has said it was her decision to focus on the two ZIP codes, she said Thursday that DeSantis was in the loop.

"If anyone really thinks I would do something without the governor knowing it and him coming you all are crazy," said Baugh, who earlier told commissioners she got involved in organizing the clinic after DeSantis reached out to Jensen and the developer contacted her for help.

DeSantis said during an appearance in Pinellas County Thursday that his team doesn't "dictate how it's done" with clinics such as the one in Lakewood Ranch.

"We do not say they can't invite people from outside. That's up to them, how they do it," he said. "However they want to do it, it's totally fine with us."

Targeting vaccines to a wealthy community of predominantly white and heavily Republican voters in a community developed by a political donor has generated intense criticism of DeSantis. The governor pushed back Wednesday against the idea that he was favoring political donors, saying: "I don't think there was any type of benefit for that."

But Baugh's email heightened concerns about political favoritism in how the vaccine clinic was operated. Using her authority to get the vaccine for herself, friends and a donor led to Baugh being accused of corruption.

Bradenton resident Alice Newlon, who serves as president of the League of Women Voters of Manatee County, wrote an email to county commissioners Thursday saying “removal of (Baugh’s) leadership is imperative to restore confidence.”

“She has corrupted the operation of the county commission,” Newlon wrote, adding: “She specifically added names to be vaccinated at the front of the line. Total corruption of the system.”

Asked about the call for Baugh to step down or be removed from leadership, Satcher said: “I think that’d be a conversation if she had taken it but she didn’t.” Commissioner George Kruse said: “It’s up to the public to make that decision; it’s not my call.”

Baugh has been under such intense scrutiny in recent days that she made a point of starting her statement Thursday by clarifying that it was not a “resignation comment.” What followed was a mix of defiance and contrition. Baugh ended her statement with a little of both.

“I take full responsibility for it all, I’m not trying to blame anybody else, nobody else is to blame,” she said. “But is it really about blaming somebody because 3,000 vaccines were brought to this county?”

The vaccine controversy is exacerbating an already tense situation on the County Commission, which has seen factions of commissioners at odds with each other.

Baugh is aligned with three newly-elected Republican commissioners – Kruse, Van Ostenbridge and Satcher – who have been moving to fire County Administrator Cheri Coryea.

Whitmore and Servia, both Republican commissioners who have supported Coryea, were attacked in an email blast Wednesday from a group called Manatee Concerned Citizen.

“These two RINOs (Republicans In Name Only) should be ashamed they took a page out of the Biden playbook in attacking Florida and our Republican Governor Ron DeSantis,” reads the email from Manatee Concerned Citizen, which encouraged people to contact Whitmore and Servia.

Whitmore said she received about 150 emails from people responding to the Manatee Concerned Citizen blast.

Both Whitmore and Servia reiterated Thursday that they weren’t criticizing DeSantis for bringing more vaccines to Manatee County, they just didn’t like how they were distributed.

“This is not about being Republican or Democrat; this is about what’s right and what’s wrong,” Servia said. “And, yeah I’m upset about it. I didn’t create it. We all have to live with it.”

**From:** Vanessa Baugh <[vanessa.baugh@mymanatee.org](mailto:vanessa.baugh@mymanatee.org)>  
**Sent:** Monday, February 15, 2021 12:58:13 AM  
**To:** Jacob Saur <[jacob.saur@mymanatee.org](mailto:jacob.saur@mymanatee.org)>  
**Subject:** Names for list

Names for vaccination requested

Rex Jensen, [REDACTED]

Lawrence Jensen, [REDACTED]

Robert E. Keelin, III, [REDACTED]

Marie E. Keelin, [REDACTED]

Vanessa Baugh, [REDACTED]

BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

In re RON DESANTIS, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

Complaint No. 21-063

**PUBLIC REPORT AND ORDER DISMISSING COMPLAINT**

On Friday, April 16, 2021, the Commission on Ethics met in its executive session and considered this complaint for legal sufficiency pursuant to Commission Rule 34-5.002, F.A.C. The Commission's review was limited to questions of jurisdiction of the Commission and of the adequacy of the details of the complaint to allege a violation of the Code of Ethics for Public Officers and Employees. No factual investigation preceded the review, and therefore the Commission's conclusions do not reflect on the accuracy of the allegations of the complaint.

The Commission voted to dismiss the complaint for lack of legal sufficiency, based on the following analysis:

1. This complaint was filed by Joseph Weinzettle of Tarpon Springs, Florida.
2. The Respondent, Ron DeSantis, serves as Governor of the State of Florida.
3. The complaint claims the Respondent has strategically set up vaccine clinics across the State so that a greater number of COVID-19 vaccines will be distributed to wealthy communities with residents who have donated to his political committee.
4. The complaint also claims that when Manatee County Commissioners criticized the Respondent for limiting the vaccine's availability to only the wealthy, the Respondent responded, "If you want us to send [the vaccine] to Sarasota next time, or Charlotte, or Pasco, let us know. We are happy to do it." The complaint alleges the Respondent, in making these comments, was retaliating against criticism against him by threatening to send the vaccine elsewhere.

5. The only Code of Ethics provision<sup>1</sup> arguably applicable to the allegations in paragraphs 3 and 4 is Section 112.313(6), Florida Statutes, which states:

MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

Section 112.312(9), Florida Statutes, defines "corruptly" as

. . . done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

6. The allegations in paragraphs 3 and 4 fail to indicate a possible violation by the Respondent of Section 112.313(6). In order to indicate a possible violation of this provision, a complaint must substantively allege that a respondent corruptly used or attempted to use his public position or resources within his public trust, or that he corruptly performed his official duties, in order to *benefit* himself or another. Here, even assuming the Respondent was involved in setting up the vaccine clinics, and even assuming many of these clinics were established in communities containing individuals who donated to his political committee, the complaint does not indicate, in a factual, nonconclusory manner, any private capacity benefit to the Respondent, as would be supportive of the "corruption" required under the statute. Further, while the complaint claims the Respondent was attempting to benefit certain political donors, this broad assertion that the Respondent was setting up the clinics specifically to benefit these particular individuals is

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<sup>1</sup> Because the complaint's allegations concern possible benefit to the Respondent's political donors—and do not allege in a factual, nonconclusory manner that the Respondent was attempting to benefit himself, his spouse, children or employer, or any business with which he contracts, in which he is an officer, partner, director, or proprietor, or in which he owns an interest—the allegations do not trigger the prohibition currently found in Article II, Section 8(g)(2) of the Florida Constitution.

conclusory; and while material assertions of fact are taken as true in an analysis of legal sufficiency, conclusions or unwarranted deductions of fact are not a sufficiently specific basis for investigation. Moreover, it is well settled that Section 112.313(6) will not be violated in situations where there is a valid public purpose for a public officer's actions, notwithstanding that the action provides a personal or private benefit to the public officer or another. See Blackburn v. State, Commission on Ethics, 589 So. 2d 431, (Fla. 1st DCA 1991). Here, the complaint contains several news articles in which the Respondent stated the vaccine sites had not been selected based on the income of the surrounding communities, but because of their higher concentration of senior citizens.<sup>2</sup> While one effect of this policy may have been that greater allotments of the vaccine went to areas where some of the Respondent's political donors resided, because there was a public purpose for the Respondent's conduct, it cannot form the basis of a violation of Section 112.313(6). And regarding the allegation that the Respondent responded to criticism from Manatee County Commissioners by indicating the vaccine could be sent elsewhere, this claim does not provide a sufficiently specific basis for investigation. The comment, as quoted in full in paragraph 4, above, indicates that the vaccine would be sent elsewhere only if the Manatee County Commission so informed the State. Also, we note there is no allegation in the complaint that the Respondent acted upon this comment by taking any action to transfer the vaccine away from Manatee County.

7. We note the complaint also claims a particular Manatee County Commissioner created a COVID-19 "VIP list" and included herself and several others on it. Because the complaint does not indicate the Respondent was involved in preparing or implementing the list, this claim cannot form the basis of a possible violation of the Code of Ethics against him.

Accordingly, this complaint is hereby dismissed for failure to constitute a legally sufficient

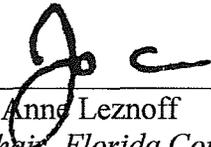
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<sup>2</sup> In one article included in the complaint, the Respondent states, "It was a choice about where there's a high concentration of seniors, and where you could have communities to provide the vaccine[.]"

complaint with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on Friday, April 16, 2021.

April 21, 2021  
Date Rendered

  
JoAnne Leznoff  
*Chair, Florida Commission on Ethics*

JL/gps

cc: Mr. Ron DeSantis, Respondent  
Mr. Joseph Weinzettle, Complainant

SEP 25 2022

RECEIVED

ORIGINAL



# Florida Commission on Ethics

P. O. Drawer 15709, Tallahassee, Florida 32317-5709

"A Public Office is a Public Trust"

## COMPLAINT 22-162

### 1. PERSON BRINGING COMPLAINT:

Name: Jeffrey M. Siskind Telephone Number: 561-352-9166

Address: 3465 Santa Barbara Drive

City: Wellington County: Palm Beach State: Florida Zip Code: 33414

### 2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

Use a separate complaint form for each person you wish to complain against:

Name: Ron DeSantis Telephone Number: 850-488-4441

Address: The Capitol

City: Tallahassee County: Leon Zip Code: 32399

Title of office or position held or sought: Governor

### 3. STATEMENT OF FACTS:

Please provide a full explanation of your complaint, describing the facts and the actions of the person named above and why you believe he or she violated the law. Include relevant dates and the names and addresses of persons whom you believe may be witnesses. Please do not submit more than 15 pages, including this form. Please do not submit video or audio tapes, CDs, DVDs, flash drives or other electronic media; such material will not be considered part of the complaint and will be returned.

### 4. OATH

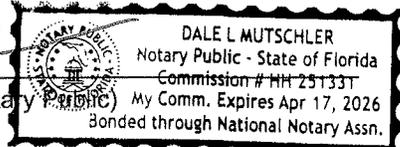
STATE OF FLORIDA  
COUNTY OF PALEM BEACH

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this 21<sup>st</sup> day of September, 2022, by JEFFREY SISKIND (name of person making statement)

I, the person bringing this complaint, do swear or affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief.

[Signature]  
SIGNATURE OF COMPLAINANT

[Signature]  
(Signature of Notary Public)



(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known  OR Produced Identification   
Type of Identification Produced: FL. DRIVERS LICENSE

## MISUSE OF PUBLIC POSITION BY GOVERNOR RON DESANTIS

On January 8, 2019, Florida's Governor, Ron DeSantis, executed Executive Order, No. 19-11, which stated in pertinent part after reciting in the preambulatory paragraphs that "maintaining the highest standards of . . . integrity among public officials . . . is essential to maintaining the public's trust in the operations of government" and that "public officials hold their positions not for their own benefit but for the benefit of the public for which they serve," that the Office of the Governor would adopt "a revised code of ethics applicable to the Executive Office of the Governor" that will ". . . in many instances go beyond the statutory code of ethics for public officers and employees in Chapter 112, part III, of the Florida Statutes."

Section 112.313(1), Florida Statutes, provides that the Governor is a "Public Officer" and states in Section 112.313(6) that a Public Officer "shall not corruptly use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others."

Governor DeSantis' January 8, 2019 pledge was broken when, on or about September 15, 2022, he actively participated and reportedly funded in part from Florida's treasury the transportation of planeloads of immigrants from Texas to Martha's Vineyard, Massachusetts, which actions may constitute violations of federal kidnapping and anti-trafficking laws and which, according to one of the Governor's spokespeople, was designed to force the burden of immigration on liberal communities far from the border.

Under the direction of Governor DeSantis, a vendor was hired by the State of Florida who published false and misleading information promising benefits that were not available to obtain voluntary consent forms from persons who were to be transported, many of which believed that they were destined to arrive in Boston. Those benefits were in large part unavailable.

These actions by the Governor of Florida were in furtherance of an unlawful purpose not reasonably tied to any state objective and wrongfully employed the State of Florida's financial resources to further objectives which are well outside the duties of his office, thus amounting to a violation of Florida's Ethics Rules in accordance with which he is obligated to serve as Governor.

In the interest of full disclosure, Complainant is an officer of a not-for-profit association which represents non-party-affiliated (NPA) voters, which is based in Washington, DC.

BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

In re RON DeSANTIS, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

Complaint No. 22-162

PUBLIC REPORT AND ORDER DISMISSING COMPLAINT

On Friday, October 21, 2022, the Commission on Ethics met in its executive session and considered this complaint for legal sufficiency pursuant to Commission Rule 34-5.002, F.A.C. The Commission's review was limited to questions of jurisdiction of the Commission and of the adequacy of the details of the complaint to allege a violation of the Code of Ethics for Public Officers and Employees. No factual investigation preceded the review, and therefore the Commission's conclusions do not reflect on the accuracy of the allegations of the complaint.

The Commission voted to dismiss the complaint for lack of legal sufficiency, based on the following analysis:

1. This complaint was filed by Jeffrey M. Siskind of Wellington, Florida.
2. The Respondent, Ron DeSantis, serves as the Governor for the State of Florida.
3. The complaint alleges the Respondent has violated Section 112.313(6), Florida Statutes, because—with his participation and under his direction—"planeloads of immigrants" were transported from Texas to Massachusetts, allegedly for the purpose of "forc[ing] the burden of immigration on liberal communities far from the border." The complaint claims the Respondent funded this transportation, in part, with State funds. The complaint also asserts the Respondent directed that a vendor be hired to prepare false and misleading information promising benefits to

the immigrants, and that this information was given to the immigrants in exchange for them signing voluntary consent forms. The complaint claims the promised benefits were, in large part, unavailable.

4. Section 112.313(6), Florida Statutes, which is the only provision in the Code of Ethics relevant to the allegations in paragraph 3,<sup>1</sup> states:

MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. [Section 112.313(6), Florida Statutes]

Section 112.312(9), Florida Statutes, defines "corruptly" as

. . . done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In order to indicate a possible violation of this provision, a complaint must substantively allege that a respondent corruptly used or attempted to use his or her public position or resources within his or her public trust, or corruptly performed his or her official duties, in order to *benefit* himself/herself or another; it is not enough that a *detriment* to a complainant or another is alleged.

6. The allegations in paragraph 3 above, fail to indicate a possible violation by the Respondent of Section 112.313(6). Even accepting as true, for the sake of argument, the allegations that the Respondent directed the transportation of the immigrants and the preparation of false information about benefits, and even assuming he used State funds to effectuate some or all of this conduct, the complaint lacks any factual, nonconclusory allegations that the

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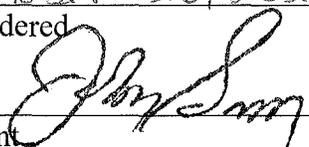
<sup>1</sup> While the complaint alleges the Respondent's conduct may have violated Federal kidnapping and anti-trafficking statutes, these laws are outside the jurisdiction of the Commission on Ethics.

Respondent's conduct was for the purpose of securing a special private capacity benefit for himself, or any other individual with whom he had a private capacity nexus, as would support the wrongfulness required to indicate a possible violation of Section 112.313(6). The allegations concerning possible detriments to the immigrants or increased responsibilities for communities "far from the border" do not, alone, provide a basis for investigation under Section 112.313(6).

7. We note the allegations discussed in paragraph 3 also do not trigger the application of the prohibition currently found in Article II, Section 8(g)(2) of the State Constitution as they do not identify, in a factual, nonconclusory manner, any disproportionate benefit to the Respondent, the Respondent's spouse, children, or employer, or any business with which the Respondent contracts, in which he is an officer, partner, director, or proprietor, or in which he owns an interest.

Accordingly, this complaint is hereby dismissed for failure to constitute a legally sufficient complaint with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on Friday, October 21, 2022.

October 26, 2022  
Date Rendered  
  
\_\_\_\_\_  
John Grant  
*Chair, Florida Commission on Ethics*

JG/gps

cc: Mr. Ron DeSantis, Respondent  
Mr. Jeffrey M. Siskind, Complainant

**John Grant**  
*Chair*  
**Glenton "Glen" Gilzean, Jr.**  
*Vice Chair*  
**Michelle Anchors**  
**Antonio Carvajal**  
**Don Gaetz**  
**JoAnne Leznoff**  
**William "Willie" N. Meggs**  
**Jim Waldman**



State of Florida  
**COMMISSION ON ETHICS**  
P.O. Drawer 15709  
Tallahassee, Florida 32317-5709

325 John Knox Road  
Building E, Suite 200  
Tallahassee, Florida 32303

*"A Public Office is a Public Trust"*

**Kerrie J. Stillman**  
*Executive Director*

**Caroline M. Klancke**  
*Deputy Executive Director/  
General Counsel*

(850) 488-7864 Phone  
(850) 488-3077 (FAX)  
www.ethics.state.fl.us

March 8, 2022

Robert B. Shillinger, Monroe County Attorney  
Office of the County Attorney  
1111 12th Street, Suite 408  
Key West, FL 33040

**BY EMAIL**

Dear Mr. Shillinger:

This letter is written in response to your recent ethics inquiry. You are the County Attorney for Monroe County and, with the knowledge and acquiescence of Holly Merrill Raschein, you write a request for ethics guidance on her behalf. On September 24, 2021, Governor DeSantis appointed Commissioner Raschein to fill a vacancy on the Monroe County Board of County Commissioners.<sup>1</sup> According to you, she has private employment with one business entity, has a paid consultancy with another business entity, is the officer of a state-level advisory board, and is an uncompensated member of the board of directors of several nonprofit organizations. Your ethics inquiry questions whether Commissioner Raschein's relationship to each entity individually creates a conflicting contractual relationship or a voting conflict for her.

Ashbritt, Inc.

You explain in your ethics inquiry that Commissioner Raschein has employment with Ashbritt, Inc., a provider of emergency management and disaster relief services, as its Government Affairs Director. You further explain that she does not have an ownership interest in the company.

According to you, the County used to have a vendor agreement with Ashbritt, but the County terminated the agreement and now there is ongoing litigation between the County and Ashbritt, the current venue of which is the Third District Court of Appeal. You state that the

<sup>1</sup> See <https://www.flgov.com/2021/09/24/governor-ron-desantis-appoints-holly-raschein-to-the-monroe-county-board-of-county-commissioners/> (visited January 12, 2022).

Mr. Robert B. Shillinger

March 8, 2022

Page 2

Board of County Commissioners could be required, at some time in the future, to vote to approve any litigation costs (including the payment of the County Attorney's fees) exceeding the County Administrator's spending authority (\$50,000) and/or any proposed settlement of the litigation. Unrelated to the litigation, the County plans to issue a request for proposals (RFP) for a new vendor agreement after the expiration of the current vendor agreement on October 22, 2022. You explain that it is possible that Ashbritt could submit a proposal in response to the RFP. Related to the RFP, the Board of County Commissioners will eventually vote to approve the specifications of the RFP, vote to issue the RFP, vote to review multiple vendors in a selection process, and, finally, vote to award the contract to a single vendor.

Relevant to this inquiry, Section 112.313(7)(a), Florida Statutes, 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 any employment or 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 from having employment or a contractual relationship that would create a continuing or frequently recurring conflict of interest or would create an impediment to the full and faithful discharge of his or her public duties.

In CEO 77-14, the Commission on Ethics found that a lawsuit between a business entity and an agency did not constitute "doing business" for purposes of Section 112.313(7)(a). Therefore, the litigation between the County and Ashbritt will not be the source of a conflict of interest under Section 112.313(7)(a). See also CEO 17-4.

The RFP could, however, result in a conflict of interest for Commissioner Raschein if Ashbritt is selected in the RFP process to become the new vendor of the County. If that were to occur, then she would have employment with a business entity (Ashbritt) that was doing business with her agency (the County). Although this circumstance would present a conflict of interest on its face, the conflict could possibly be negated by an exception. Because this scenario is presented hypothetically and there are no specific facts to that end, I am unable to say for certain whether any particular exception applies, but you should be cognizant that the exception for sealed competitive bidding, Section 112.313(12)(b), Florida Statutes, could apply if the County decided to obtain a vendor by that method rather than by RFP. See CEO 89-48 (finding RFPs are not sealed competitive bids and do not benefit from the exception in Section 112.313(12)(b), F.S.).

Also relevant to your question on conflicts of interest, Section 112.313(3), Florida Statutes, states:

DOING BUSINESS WITH ONE'S AGENCY.—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 clause of this provision operates to prevent a public employee from acting in his or her public capacity as a purchasing agent, or a public officer acting in his or her official capacity, to purchase, rent, or lease any realty, goods, or services for his or her agency from any business entity in which he or she or his or her spouse or child is an officer or director or in which the employee or officer or his or her spouse or child owns more than a five-percent ownership interest. The Commission on Ethics has found that a member of a board acts in his or her official capacity when the board acts to purchase, rent, or lease on behalf of the agency, even when the board member abstains from the vote. CEO 90-24 and CEO 10-4. The second clause of this subsection prevents a public employee or officer from acting in his or her private capacity to rent, lease, or sell any realty, goods, or services to his or her public agency or to any agency of his or her political subdivision. The Commission on Ethics has found in the past that a public officer or employee acts in a private capacity to sell, rent, or lease to their agency when a business entity of which he or she is an officer or director sells, rents, or leases to his or her agency. CEO 87-41 and CEO 09-1.

As with Section 112.313(7)(a), the Commission has opined that lawsuits between an agency and a business entity do not fall within the scope of the prohibition of Section 112.313(3). See CEO 77-14. Therefore, the litigation between the County and Ashbritt will not form the basis of a prohibited conflict of interest under Section 112.313(3).

Turning now to analysis of the potential vendor agreement with Ashbritt under Section 112.313(3), Commissioner Raschein apparently will not have a prohibited conflict of interest under the first clause Section 112.313(3) because she is not an officer or director in Ashbritt and she does not own a material interest in the company. She also apparently will not have a prohibited conflict of interest under the second clause of Section 112.313(3) because it does not

Mr. Robert B. Shillinger

March 8, 2022

Page 4

seem that she will be personally involved in the sale on behalf of Ashbritt and she is not an officer or director in the company.<sup>2</sup>

Lastly, you asked about the applicability of the voting conflicts statute, Section 112.3143(3)(a), Florida Statutes, which states in the relevant part:

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.

The term "principal by whom retained" is defined in Section 112.3143(1)(a), Florida Statutes, as:

an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one's client, employer, or the parent, subsidiary, or sibling organization of one's client or employer.

Section 112.3143(3)(a) prohibits a local public officer from voting on any matter that will inure to his or her special private gain or loss or that he or she knows would inure to the special private gain or loss of a principal by whom he or she is retained, a relative, or business associate. One is only retained by a principal when, as the definition requires, the principal directs one's conduct in exchange for compensation or other consideration. See, e.g., CEO 20-10 and CEO 84-107. One is a business associate to another when a common business enterprise is shared between them. See, e.g., CEO 94-10 and CEO 98-9.

In Commissioner Raschein's case, Ashbritt is a principal by whom she is retained, given that the company is her employer. Therefore, any vote that would inure to Ashbritt's special private gain or loss will pose a voting conflict for her. You asked specifically about certain votes that may be scheduled for the Board of County Commissioners in the future. Any vote concerning the payment of legal fees or the settlement of the litigation would inure to Ashbritt's special private gain or loss because those matters directly affect the County's ability to pursue the litigation, which will necessarily affect the size of Ashbritt's recovery or liability in the lawsuit.

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<sup>2</sup> If Commissioner Raschein is personally involved in the sale of services to the County on behalf of Ashbritt (e.g. acting as the salesperson or having another role in the processing of the transaction), then that apparently would violate Section 112.313(3).

Mr. Robert B. Shillinger

March 8, 2022

Page 5

Regarding the votes to create and approve the RFP, Commissioner Raschein will have a voting conflict if it appears that Ashbritt "will or might" submit a bid or proposal. See CEO 91-7, Question 2. Once the RFP has been approved and Ashbritt has submitted a proposal that remains under consideration, any vote to eliminate, advance, or award any of the submitted proposals will inure to the special private gain or loss of Ashbritt and, therefore, will pose a voting conflict to Commissioner Raschein.

Pursuant to Section 112.3143(3)(a), Florida Statutes, when Commissioner Raschein is presented with a voting conflict, she is required to publicly state to the assembly the nature of her interest in the matter, abstain from voting, and file a CE Form 8B, "Memorandum of Voting Conflict for County, Municipal and other Local Public Officers," with the person responsible for taking the minutes of the meetings of the Board of County Commissioners.

Commissioner Raschein will not be limited from discussing votes related to Ashbritt with her fellow board members at public meetings. The limitations on appointed public officers found in Section 112.3143(4), Florida Statutes,<sup>3</sup> will not apply to Commissioner Raschein. Although Commissioner Raschein was appointed to the Board of County Commissioners, which is an elective position, she will be considered an elected public officer for purposes of Section 112.3143(4), and thus will not be limited by that provision. See CEO 87-14 and CEO 09-9, footnote 4. Commissioner Raschein, however, for the sake of appearances, may wish to refrain from those discussions when she will ultimately abstain due to a voting conflict.

Addressing the next question in your inquiry, Commissioner Raschein is not permitted to appear before the Board of County Commissioners to represent the interests of Ashbritt or otherwise appear on behalf of Ashbritt because such a scenario is prohibited by the second clause of Section 112.313(7)(a), discussed above. The statute operates preventatively, and prohibits situations where one might be tempted to dishonor his or her public responsibilities, even when he or she might have the strength of character to resist such temptations; the presence of a temptation is all that is required to find a conflicting contractual relationship under the second clause of Section 112.313(7)(a). See *Zerweck v. Commission on Ethics*, 409 So. 2d 57 (Fla. 4th DCA 1982). The Commission has interpreted the second clause of Section 112.313(7)(a) to prohibit public officers from representing the interests of their employers or other entities with which they have contractual relationships before their own boards. See CEO 77-126, CEO 78-86, and CEO 20-8, Question 1. For this reason, she would not be able to represent Ashbritt before the Board of County Commissioners while she is a member of that board.

You ask whether Commissioner Raschein must recuse herself from discussing matters related to Ashbritt with County staff. As discussed above, Commissioner Raschein is prohibited from representing her employer, Ashbritt, before her agency. Thus, if she wished to have

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<sup>3</sup> Section 112.3143(4) states:

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.

discussions with staff on behalf of Ashbritt, Section 112.313(7)(a) would prohibit those discussions. We further advise, given that it will be difficult for staff and the public to discern which conversations concerning Ashbritt are occurring on behalf of Ashbritt and which conversations are occurring in Commissioner Raschein's capacity as a County Commissioner, it would be best if she avoid all conversations with staff concerning Ashbritt until first obtaining ethics guidance particular to the facts surrounding a potential conversation, thereby avoiding the risk of incurring a prohibited conflict of interest.

Your last question concerning Commissioner Raschein's employment with Ashbritt relates to the litigation between Ashbritt and the County. Specifically, you ask whether Commissioner Raschein may participate in attorney-client closed sessions held pursuant to Section 286.011(8), Florida Statutes.<sup>4</sup> Although the Code of Ethics for Public Officers and Employees does not contain any mechanism to require the exclusion of a board member from either an open or closed session of his or her own board, there are some prohibitions of which Commissioner Raschein should be aware. Section 112.313(8), Florida Statutes, prohibits a public officer or employee from disclosing information not available to members of the general public and gained by reason of his or her public position to achieve a gain personally or for another person or business entity. To the extent that nearly all the information discussed in an attorney-client closed session about the Ashbritt litigation will not be available to the general public, yet gained by reason of Commissioner Raschein's position, Section 112.313(8) would prohibit her from disclosing that information to Ashbritt or to anyone else likely to benefit from having the information. Also, Section 112.313(6), Florida Statutes,<sup>5</sup> and the recent amendment to the Florida Constitution currently found at Article II, Section 8(g)(2), Florida Constitution,<sup>6</sup> would prohibit Commissioner Raschein from taking any action that was contrary to the proper performance of her public duties to achieve a benefit for her employer. If Commissioner Raschein is taking a specific action that she is concerned may be prohibited by these prohibitions, she is advised to call the Commission on Ethics to seek specific ethics guidance.

#### First State Bank

You state that Commissioner Raschein works as an independent contractor for First State Bank as its Upper Keys Market Advisor, work for which she is paid an hourly wage with no commissions. You state that the County currently has no contracts with First State Bank, but, at various times in the past, First State Bank has served as a depository for the County. According

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<sup>4</sup> These are commonly referred to as "shade meetings."

<sup>5</sup> Section 112.313(6), Florida Statutes, states:

No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

<sup>6</sup> Article II, Section 8(g)(2), Florida Constitution, states:

A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest. The Florida Commission on Ethics shall, by rule in accordance with statutory procedures governing administrative rulemaking, define the term "disproportionate benefit" and prescribe the requisite intent for finding a violation of this prohibition for purposes of enforcing this paragraph. Appropriate penalties shall be prescribed by law.

to you, it is the Clerk of the Circuit Court for Monroe County, not the County Commission, that arranges depository accounts with banks for the County. You ask whether these circumstances amount to a conflict of interest or voting conflict for Commissioner Raschein.

Because the County is not presently doing business with First State Bank, there can be no conflict of interest under Sections 112.313(3) or (7)(a). See, e.g., CEO 08-14. However, if the Clerk of the Circuit Court for Monroe County initiated a depository account for the County with First State Bank, it would appear, on its face to be a conflict under Section 112.313(7)(a); Commissioner Raschein would have a contractual relationship with a business entity (the bank) doing business with her agency (the County).

There is an exception in Section 112.313(12)(g), Florida Statutes,<sup>7</sup> but it will not be applicable to Commissioner Raschein. Section 112.313(12)(g) operates to negate a conflict of interest derived from a public officer or employee being an "stockholder, officer, or director of a bank" when the bank is also a depository for the agency. Commissioner Raschein is an independent contractor of the bank and not a shareholder, officer, or director, foreclosing the potential applicability of that exception. There is no precedent in the Commission's formal opinions as to whether Section 112.316 might apply to negate the conflict in this instance; if it appears likely that the Clerk of the Circuit Court might choose First State Bank as the County's depository while Commissioner Raschein has an active independent contractor relationship with the bank, she may wish to seek a formal opinion from the Commission on Ethics.

#### Healthy Start

You indicate that Commissioner Raschein also serves as an uncompensated member of the board of directors of Healthy Start, a nonprofit organization. In a subsequent email, you indicated that Commissioner Raschein is not a rank-and-file member of the nonprofit organization. According to you, Monroe County has contracted with Healthy Start annually for the last 15 years to provide it funding. These contracts take the form of grant agreements between the Board of County Commissioners and Healthy Start and the source of funding are budgetary funds set aside each year to support nonprofits in Monroe County. It is expected that the County Commission will vote to approve funding to Healthy Start for the upcoming year. Additionally, in 2020, Healthy Start applied for and received CARES Act funding from Monroe County.

Because Commissioner Raschein is uncompensated in her role with Healthy Start, she does not have employment or a contractual relationship with that business entity. Therefore, Healthy Start cannot be the basis of a conflicting employment or contractual relationship under Section 112.313(7)(a). Similarly, in reference to the voting conflict statute, because she is uncompensated in her role at Healthy Start, Healthy Start is not a principal by whom she is retained, so there would only be a voting conflict on matters pertaining to Healthy Start if they

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<sup>7</sup> Section 112.313(12)(g) states:

The fact that a county or municipal officer or member of a public board or body, including a district school officer or an officer of any district within a county, is a *stockholder, officer, or director of a bank* will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such public board or body, provided it appears in the records of the agency that the governing body of the agency has determined that such officer or member of a public board or body has not favored such bank over other qualified banks. [Emphasis added.]

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would inure to Commissioner Raschein's special private gain or loss (personally). Given that your letter does not indicate there is any reason to believe that any vote concerning Healthy Start would inure to her special private gain or loss, it does not appear Commissioner Raschein would have a voting conflict if she voted on matters pertaining to Healthy Start.

It does not appear that Commissioner Raschein will have a conflict of interest under Section 112.313(3), either. While she is a director of Healthy Start, Healthy Start is not renting, leasing, or selling any realty, goods or services to the County and the County is not purchasing, renting, or leasing any realty, goods, or services from Healthy Start. See CEO 18-6. For this reason, the prohibition in Section 112.313(3) is apparently inapplicable to Commissioner Raschein's relationship with Healthy Start.

Based on the facts presented in your letter, it appears that Healthy Start is not the source of a prohibited conflict of interest or a voting conflict for Commissioner Raschein.

#### Leadership Monroe

In your letter, you state that Commissioner Raschein is an uncompensated member of the board of directors of a nonprofit organization called Leadership Monroe. Leadership Monroe offers leadership classes and the County usually pays the tuition for County officers and employees selected to attend the program. You ask whether this scenario presents Commissioner Raschein with a conflict of interest.

Because Commissioner Raschein is uncompensated in her role with Leadership Monroe, she does not have employment or a contractual relationship with that business entity. Therefore, Leadership Monroe cannot be the basis of a conflicting employment or contractual relationship under Section 112.313(7)(a).<sup>8</sup> Similarly, in reference to the voting conflict statute, because she is uncompensated in her role at Leadership Monroe, Leadership Monroe is not a principal by whom she is retained, so there would only be a voting conflict on matters pertaining to Leadership Monroe if they would inure to Commissioner Raschein's special private gain or loss. Given that your letter does not indicate there is any reason to believe that any vote concerning Leadership Monroe would inure to her special private gain or loss, it does not appear Commissioner Raschein would have a voting conflict if she voted on matters pertaining to Leadership Monroe.

If the County pays tuition to Leadership Monroe, Commissioner Raschein will, however, have a conflict of interest under Section 112.313(3), *supra*, unless she otherwise benefits from an exception. If the County purchases tuition for the classes, she will be acting in a private capacity as a director of a business entity (Leadership Monroe) to sell services (leadership classes) to her agency (the County Commission) or an agency of her political subdivision. See CEO 81-2 and CEO 09-1.

It is unclear from the facts presented whether any exception will apply to Commissioner Raschein to negate the conflict of interest in this instance. If the total purchase price the County

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<sup>8</sup> This conclusion assumes Commissioner Raschein is not a rank-and-file member of Leadership Monroe. If she is a rank-and-file member of Leadership Monroe, then she would indeed be considered to have a contractual relationship with Leadership Monroe. See CEO 10-2. In such a scenario, she would have a contractual relationship with a business entity (Leadership Monroe via her membership in the nonprofit) doing business with her agency (the County).

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typically pays to Leadership Monroe in a calendar year is less than \$500 per calendar year, Section 112.313(12)(f), Florida Statutes, may be applicable. Depending on the availability of leadership classes elsewhere in the County, it is possible that Leadership Monroe might be a sole source of supply in the political subdivision, as contemplated in Section 112.313(12)(e), Florida Statutes. Additional facts would be needed to determine whether either of these exceptions would apply. It is not readily apparent that any other exception to Section 112.313(3) would apply. If you believe one of these exceptions might be available to Commissioner Raschein, please contact me for updated guidance.

If Commissioner Raschein does not benefit from an exception to Section 112.313(3), it would be advisable either (1) for the County to stop purchasing services from Leadership Monroe or (2) for Commissioner Raschein to resign from the board of directors of Leadership Monroe.

Monroe County Education Foundation, Inc., also known as "the Take Stock Board"

You write that Commissioner Rachein serves as an uncompensated member of the board of directors of the Monroe County Education Foundation, Inc., which is a nonprofit organization commonly referred to by residents of Monroe County as "the Take Stock Board." The County Commission usually grants funding to the Take Stock Board, having done so most recently in 2020 by a grant of CARES Act funding. All contracts between the Take Stock Board and Monroe County have expired; there currently are no active contracts between the two. You inquire whether a conflict of interest or voting conflict would arise if the Board of County Commissioners voted to make a new grant to the Take Stock Board.

Regarding the possibility of a voting conflict, as noted above with regard to her uncompensated service on other nonprofit boards of directors, Commissioner Raschein will not have a voting conflict if the Board of County Commissioners votes to grant the Take Stock Board funding. Because she is uncompensated by the Take Stock Board, the Take Stock Board is not a principal by whom she is retained. Also, because the vote would not inure to Commissioner Raschein's special private gain or loss personally, it would not pose a voting conflict for her.

Regarding possible conflicts of interest if the County resumed funding to the Take Stock Board, Section 112.313(7)(a) would not pose a prohibited conflict of interest to Commissioner Raschein. Because her service on the Take Stock Board is uncompensated, she has neither employment nor a contractual relationship with the Take Stock Board.<sup>9</sup> Thus, the prohibition in Section 112.313(7)(a) would not be applicable to Commissioner Raschein's service on the Take Stock Board.

Similarly, the prohibition in Section 112.313(3) would not be applicable because the Take Stock Board is not renting, leasing, or selling any realty, goods or services to the County and the County is not purchasing, renting, or leasing any realty, goods, or services from the Take

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<sup>9</sup> This conclusion assumes Commissioner Raschein is not a rank-and-file member of the Take Stock Board. If she is a rank-and-file member of the Take Stock Board, then she would indeed be considered to have a contractual relationship with it. See CEO 10-2. In such a scenario, she would have a contractual relationship with a business entity (the Take Stock Board via her membership in the nonprofit) doing business (the grant agreement) with her agency (the County).

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Stock Board. See CEO 18-6. For this reason, the prohibition in Section 112.313(3) is inapplicable to Commissioner Raschein's service on the Take Stock Board.

#### Florida Council on Arts and Culture

Lastly, you explain that Commissioner Raschein is a member of the Florida Council on Arts and Culture (Arts Council), which is an advisory body of the Florida Department of State and created pursuant to Section 265.285, Florida Statutes. The chief duties of the Arts Council include reviewing applications for grant funding to acquire, renovate, or construct cultural facilities and to recommend a particular prioritization of those grants. To the best of your knowledge, the County does not currently have any grant agreements with the Arts Council, though you anticipate that the County might want to apply for such a grant in the future. You ask whether those circumstances would amount to a voting conflict.

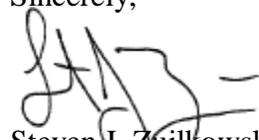
Neither a vote by Commissioner Raschein as a member of the Board of County Commissioners to apply for funding from the Arts Council nor a vote by her as a member of the Arts Council to recommend an award of funding to the County will pose a voting conflict for Commissioner Raschein. Neither vote will inure to her personal special private gain or loss. Also, neither vote would inure to the special private gain or loss of a principal by whom she is retained. By definition, a "principal by whom retained" does not include another agency. See Section 112.3143(1)(a), Florida Statutes. For this reason, neither vote would amount to a voting conflict.

If the Arts Council did give a grant to the County, such an arrangement would not result in a prohibited conflict of interest. In that scenario, both her position as a County Commissioner and her position as an uncompensated Arts Council board member would be considered "office holding," not employment or a contractual relationship. See CEO 92-39 and CEO 15-8. In the absence of employment or a contractual relationship, there can be no *conflicting* employment or contractual relationship under Section 112.313(7)(a).

#### Conclusion

Your inquiries are answered accordingly. The guidance provided in this letter is limited to the facts that have been provided. If there are additional material facts, or if I have misstated them in this letter, please contact me again. The referenced statutes and advisory opinions are available on the Commission's website at [www.ethics.state.fl.us](http://www.ethics.state.fl.us). If you have any other questions about the guidance contained in this letter, please send me an email at [zuilkowski.steven@leg.state.fl.us](mailto:zuilkowski.steven@leg.state.fl.us).

Sincerely,



Steven J. Zuilkowski  
Senior Attorney

**John Grant**  
*Chair*  
**Glenton "Glen" Gilzean, Jr.**  
*Vice Chair*  
**Michelle Anchors**  
**Antonio Carvajal**  
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September 7, 2022

Mr. Daniel J. Kavanaugh

Transmitted by email to: [Daniel.Kavanaugh@hklaw.com](mailto:Daniel.Kavanaugh@hklaw.com)

Re: Your ethics inquiry

Dear Mr. Kavanaugh:

This is in response to your above-referenced inquiry, in which you ask whether you will have a prohibited conflict of interest under the Section 112.313(7)(a), Florida Statutes, were you to be appointed by the Governor to the Board of Directors for Florida Is For Veterans, Inc. (hereinafter the corporation), a nonprofit corporation created by Section 295.21, Florida Statutes.<sup>1</sup> Your inquiry stems from the fact that you are currently an associate attorney with the law firm of Holland & Knight LLP (the law firm).

In particular, you question whether you would be in violation of the prohibitions in Section 112.313(7)(a) if, after your appointment, current or future clients of the law firm were to begin conducting business with the corporation on matters unrelated to the firm's representation. As an example, you ask whether the statute would be applicable if, after your appointment, the corporation were to award a grant to a company when that same company is retaining your firm on an unrelated matter involving the lease of a commercial building

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<sup>1</sup> While Section 295.21(1), Florida Statutes, states that Florida For Veterans, Inc. is to be considered a nonprofit corporation, the statute goes on to state—in Section 295.21(4), Florida Statutes—that its board members are subject to the requirements of several prohibitions in the Code of Ethics (Part III, Chapter 112, Florida Statutes), including Sections 112.313(7)(a) (Conflicting Employment or Contractual Relationships) and 112.3143 (Voting Conflicts), Florida Statutes.

Section 112.313(7)(a), Florida Statutes,<sup>2</sup> states:

**CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIPS.**--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) has two parts, with the first part prohibiting you, if appointed, from having an employment or a contractual relationship with a business entity or agency that is subject to the regulation of, or is doing business with, the corporation. In the past, the Commission has found that a member of a law firm has a contractual relationship with each client of the firm, regardless of whether he is performing or supervising work regarding that particular client. See CEO 20-4, CEO 16-9, CEO 03-7, and CEO 95-30. The Commission has also found that business entities and agencies are "doing business" with each other, for purposes of the statute, if they are mutual parties to a grant agreement. See CEO 19-3 and CEO 18-6.

Applying the foregoing to prospective clients of your firm, it appears that if your firm accepts, as a client, a business entity receiving grant funding from the corporation while you are serving on the corporation's board, you would be in violation of the prohibition of the first part of Section 112.313(7)(a). In that scenario, you would have a contractual relationship with a business entity (your firm's client) conducting business (via the grant agreement) with your agency (the corporation), which meets the elements of the first part of the statute. Again, such a conflict would be found even if you were not handling your firm's representation of the client. See CEO 20-8, Question 2. And such a conflict would exist even if you were to abstain from voting on measures affecting the client, as compliance with the voting conflicts law (Section 112.3143, Florida Statutes) does not negate a prohibited conflict of interest under Section 112.313(7)(a). See CEO 20-8, n.2 and CEO 03-7.

Moreover, given this analysis, a conflict could also be found under the first part of Section 112.313(7)(a) were a client of your firm to begin conducting business with the corporation following your appointment. In such a circumstance, again, you would have a contractual relationship with a client doing business with your agency.

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<sup>2</sup> The Commission opinions and statutes cited herein are viewable at [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

The analysis changes somewhat if your firm is representing a client already doing business with the corporation at the time that you are appointed. While you will still have a contractual relationship with the client in such a circumstance, the Commission has applied Section 112.316, Florida Statutes,<sup>3</sup> to "grandfather" employment or contractual relationships with business entities doing business with an officer's agency when both the employment or contractual relationship and the business relationship with the agency predate the officer's holding office. See CEO 19-7 and CEO 09-1. Accordingly, if your firm's contractual relationship with a client and the corporation's business-relationship with that same client both precede your appointment to the corporation's board of directors, no prohibited conflict of interest will be created under the first part of Section 112.313(7)(a).<sup>4</sup>

However, the grandfathering exception does not negate conflicts under the second part of Section 112.313(7)(a) (see CEO 15-14, CEO 09-1, and CEO 97-15), which—as quoted above—will prohibit you, if appointed, from having any employment or contractual relationship that would create a continuing or frequently recurring conflict between your private interest and the performance of your public duties, or that would impede the full and faithful discharge of your public duties. Importantly, this portion of the statute is entirely preventative in nature; it is triggered in situations where one could merely be tempted to dishonor his public position. See CEO 13-16. For this reason, the second part of the statute requires an examination of the nature and extent of a public officer's duties together with a review of his private employment to determine whether the two could create a situation that "tempts dishonor." See Zerweck v. Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4<sup>th</sup> DCA 1982); see also CEO 09-1. In the past, the Commission has found conflicts under the second part of Section 112.313(7)(a) when a public officer or his firm represents a client before his board (see CEO 20-8) as well as when a public officer has access to confidential information that could directly benefit a private client. See CEO 13-16.

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<sup>3</sup> Section 112.316 states:

CONSTRUCTION.--It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

<sup>4</sup> That being said, renewals or extensions of a "grandfathered" contract, after a public officer's appointment, are no longer considered "grandfathered," unless the renewal or extension is expressly provided for (with the term or time period of extension certain) in the original contract, and the renewal or extension occasions no change to the contract's terms. See CEO 19-7, n.3 and CEO 02-14.

Mr. Daniel Kavanaugh

September 7, 2022

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Your inquiry, understandably, is generally phrased, although it is difficult to provide recommendations concerning the second part of Section 112.313(7)(a) without knowing which clients of your firm are currently doing business with the corporation, as well as more information concerning the nature of your firm's representation of those clients and of the clients' relationships with the corporation. In the event that you wish to continue pursuing an appointment to the corporation, please provide me with this information for more specific guidance.<sup>5</sup>

Drawing these threads together, it appears that—if appointed—you will have a prohibited conflict of interest under the first part of Section 112.313(7)(a) were your firm to accept new clients who are engaged in business with the corporation, or were any current clients of your firm to begin conducting business with the corporation. Regarding any current clients of your firm who are already conducting business with the corporation at the time of your appointment, it appears any prohibited conflict of interest under the first part of Section 112.313(7)(a) will be negated due to "grandfathering," although more information is needed to determine whether you might have a conflict of interest under the second part of Section 112.313(7)(a). Please note, though, that if you are appointed, one example of a violation under the second part of Section 112.313(7)(a) could occur were you or your firm to represent a client before the corporation.

Should you have any questions concerning the content of this letter, please contact me.

Sincerely,

*Gray Schafer*

Gray Schafer

Assistant General Counsel

Florida Commission on Ethics

(850)-488-7864

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<sup>5</sup> Separate and apart from the applicability of Section 112.313(7)(a), the voting conflict statute (Section 112.3143) may apply if you are asked as a director of the corporation to vote on a measure that may result in "special private gain or loss" (defined in Section 112.3143(1)(c), Florida Statutes, as "an economic benefit or harm") to a client of your law firm. See CEO 11-6.

## CONFLICT OF INTEREST

### CONTRACT BETWEEN COUNTY COMMISSIONER'S AGENCY AND EMPLOYER REINSTATED PURSUANT TO LITIGATION SETTLEMENT AGREEMENT

To: *Robert B. Shillinger, County Attorney (Monroe County)*

#### SUMMARY:

A member of the Monroe County Board of County Commissioners will not have a prohibited conflict of interest if a contract between her Board and her private employer that was executed prior to her appointment to office is reinstated through a litigation settlement agreement and if options written into that contract are then exercised to extend the contract. Analysis is also provided regarding whether the Commissioner will have a prohibited conflict of interest if amendments are made to the terms of the contract, and guidance is provided concerning potential voting conflicts. Referenced are CEO 76-118, CEO 77-14, CEO 77-126, CEO 78-86, CEO 81-2, CEO 82-10, CEO 84-107, CEO 90-24, CEO 96-31, CEO 96-32, CEO 97-11, CEO 02-14, CEO 02-19, CEO 03-17, CEO 08-4, CEO 09-1, CEO 12-13, CEO 17-4, CEO 19-7, CEO 20-8, and CEO 20-10.

#### QUESTION 1:

Will a prohibited conflict of interest be created for a member of the Monroe County Board of County Commissioners if a terminated contract between the County and the member's employer that was originally executed before the member's appointment to the Board is reinstated to settle litigation between the employer and the County?

This question is answered in the negative.

You write your letter of inquiry on behalf of Holly Merrill Raschein,<sup>1</sup> a current member of the Board of County Commissioners of Monroe County (Board). In your letter, you explain a sequence of events concerning the County's vendor agreement with AshBritt, Inc. (Ashbritt), a provider of emergency management and disaster relief services. On June 21, 2017, the County contracted with AshBritt for disaster relief services. The term of the contract was five years (expiration date of June 20, 2022), but the contract also contained options for the County to renew the agreement in one-year increments for up to five additional years (latest possible expiration date of June 20, 2027), with all other terms remaining the same. On October 25, 2017, however, AshBritt sued the County and, on August 18, 2018, the County terminated the contract with AshBritt. On December 1, 2020, AshBritt hired Ms. Raschein as its new director of government relations. In that role, she is not an owner, officer, or corporate director of AshBritt. On September 24, 2021, Governor DeSantis appointed Ms. Raschein to a vacant seat on the Board. On June 20, 2022, the expiration date passed for the original five-year term of the contract between the County and Ashbritt. On July 25, 2022, AshBritt made an offer to settle its litigation against the County. On August 23, 2022, Commissioner Raschein won the open primary for the special election to fill the remaining two years of the unexpired term to which she had originally been appointed. On August 31, 2022, AshBritt amended its settlement offer.

Under the terms of the July 25, 2022 settlement offer, Ashbritt would dismiss all claims with prejudice and waive payments for additional fees, including attorney's fees, and, in exchange, the County would reinstate the June 21, 2017 contract and exercise its option to extend the term

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<sup>1</sup> When summarizing the chronology of events, we refer to her as Ms. Raschein when referencing events occurring before her appointment to the Board of County Commissioners and as Commissioner Raschein when referencing events occurring after her appointment.

of the contract for one additional year. The terms of the August 31, 2022 amended settlement offer are identical, except it stipulates the County will agree to exercise all five of its options to extend the term of the contract by one year, for a total of five years. Under the terms of the amended settlement agreement, once the options to extend the agreement are exercised, the contract would be set to expire on June 20, 2027. In subsequent communications with Commission staff, you indicate it remains unclear whether the settlement agreement will be rendered as part of a judicial order, though you expect that AshBritt would prefer this and you expect the County will have no objection to it.

It is expected that on November 15, 2022, Commissioner Raschein will begin serving a two-year term (after which the seat will return to its normal election cycle). The following day, on November 16, 2022, you expect the Board to consider AshBritt's settlement offer in a closed, attorney-client session. You and Commissioner Raschein have exchanged correspondence and participated in video conferences with Commission staff about her ethical obligations and you have informed Commission staff that Commissioner Raschein will not be participating in the closed attorney-client session, and will follow the procedures for a voting conflict under Section 112.3143, Florida Statutes, relating to any votes pertaining to AshBritt or the litigation (more on that below).

With this background, you ask whether a conflict of interest will be created for Commissioner Raschein if the County accepts the original settlement agreement or the amended settlement agreement.

Relevant to this inquiry, Section 112.313(7)(a), Florida Statutes, 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 any employment or 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 Section 112.313(7)(a) 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 would create an impediment to the full and faithful discharge of his or her public duties.

We first review Commissioner Raschein's employment with AshBritt under the first clause of Section 112.313(7)(a). In your request for an ethics opinion, you detail two separate contractual agreements requiring analysis: (1) the settlement agreement extinguishing the lawsuit AshBritt brought against the County; and (2) the 2017 contract between the County and AshBritt for disaster relief services that will be reinstated under the terms of the proposed settlement agreement.

We address the settlement agreement first. We have not previously had the opportunity to address whether a settlement agreement could create a conflict of interest for a public officer or employee under the first clause of Section 112.313(7)(a). We have said in the past that an agency and business entity are not "doing business" when they commence or participate in a lawsuit against each other. See CEO 17-4 (citing CEO 77-14). In practical terms, a settlement of an active lawsuit before the courts is a necessary part of the lawsuit—its end—and represents resolution of the conflict. Because a settlement agreement is part of a lawsuit, and a lawsuit does not constitute "doing business," we find that an agreement to settle a lawsuit that has been filed in the courts also does not constitute "doing business." Therefore, the settlement agreement between the County

and AshBritt does not create a prohibited conflict of interest under the first clause of Section 112.313(7)(a) for Commissioner Raschein.

We next address the 2017 contract for disaster relief services. It is clear that if this contract is reinstated, Commissioner Raschein will have employment with a business entity (AshBritt) that is doing business with her agency (the County). There may, however, be an exception available to negate the conflict.

In certain situations when a conflict of interest under the first clause of Section 112.313(7)(a) is present, the conflict can be negated by an application of Section 112.316, Florida Statutes,<sup>2</sup> if the public officer's or public employee's private employment or contractual relationship and the "doing business" relationship between the business entity and the agency both predate the public officer's office holding or the public employee's public employment. CEO 82-10; CEO 96-31; CEO 96-32; CEO 02-14; CEO 02-19; CEO 08-4, footnote 6; and CEO 09-1. In our numerous opinions on this topic, we have referred to this negation of the conflict of interest as "grandfathering." For example, in CEO 19-7, a preexisting business relationship between a water management district and a corporation was found not to be a prohibited conflict of interest under Section 112.313(7)(a) for a shareholder of the corporation who was later appointed to the governing board of the water management district. Even when preexisting contracts are "grandfathered," renewals and amendments to those contracts are considered new contracts no longer benefiting from the application of "grandfathering," unless "the renewal is for a time certain

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<sup>2</sup> Section 112.316 provides:

Construction.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

provided for in the original [contract] and the terms of the renewal remain the same as those of the original contract." CEO 09-1 (citing CEO 03-17).

We find that grandfathering is available to negate the prohibited conflict of interest under the first clause of Section 112.313(7)(a). The contract was originally executed on June 21, 2017, and Commissioner Raschein's employment with AshBritt began on December 1, 2020; both events predate her appointment to the Board on September 24, 2021. Although the contract for disaster relief services was not continuously in effect, having been terminated in 2018, we find that the contract represents a meeting of the minds between the County and AshBritt that occurred in a conflict-free environment for Commissioner Raschein, long before she was appointed to the Board. Thus, the termination and subsequent reinstatement of the contract does not affect the availability of "grandfathering" to negate the conflict.

The exercise of the options to extend the reinstated contract also do not vitiate the availability of "grandfathering." The options were included in the terms of the original contract and merely extend the term of the deal for a time certain, while leaving all other terms unchanged. We allowed similar extension options to be exercised in CEO 03-17 and CEO 09-1 without vitiating the availability of "grandfathering"; we allow it here for the same reasons.

For these reasons, the prohibited conflict of interest created under the first clause of Section 112.313(7)(a) by the reinstatement of the 2017 contract is negated by "grandfathering."

Lastly, we must analyze Commissioner Raschein's employment with AshBritt under the second clause of Section 112.313(7)(a). We see no indication that the second clause of Section 112.313(7)(a) poses a prohibited conflict of interest for her, given that there is nothing obvious about her private role that would tempt her to dishonor her public responsibilities. Previous contacts with Commission staff indicate that she does not represent AshBritt's interests before the

County Commission or County staff. As Commission staff wrote to you in a March 8, 2022 letter, such communications made on behalf of AshBritt would violate the second clause of Section 112.313(7)(a) by creating a continuing and frequently recurring conflict between her public duties and her private employment; potentially tempting her to dishonor her public responsibilities. See Zerweck v. Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982); see also CEO 77-126, CEO 78-86, and CEO 20-8, Question 1.<sup>3</sup>

We understand that you and Commissioner Raschein have been in regular contact with Commission staff to clarify her ethical obligations in light of her ongoing employment with AshBritt. In those communications, Commission staff have provided guidance for complying with the voting conflict law, specifically when votes on the litigation between AshBritt and the County are presented to the Board. You did not specifically ask about voting conflicts in the instant ethics inquiry, but we take this opportunity to endorse what has already been communicated to you about voting conflicts<sup>4</sup> because you indicate votes about the settlement agreement will be presented to the Board in November.

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<sup>3</sup> We briefly note that the prohibition in Section 112.313(3), Florida Statutes, is inapplicable to the scenario because (1) Commissioner Raschein is not acting in an official capacity (i.e., through her board, as in CEO 90-24) to buy, rent, or lease any realty, goods, or services from a company in which she, her spouse, or her child are an officer, partner, director, or proprietor and (2) she is not acting in a private capacity (i.e., personally, as in CEO 12-13, or through a company in which is an officer, director, or owner of more than a 5 percent interest, as in CEO 81-2 and CEO 09-1) to sell, rent or lease any realty, goods, or services to the County or any agency of her political subdivision.

<sup>4</sup> In a letter to you concerning Commissioner Raschein dated March 8, 2022, Commission staff addressed these topics, writing:

Lastly, you asked about the applicability of the voting conflicts statute, Section 112.3143(3)(a), Florida Statutes . . . .

Section 112.3143(3)(a) prohibits a local public officer from voting on any matter that will inure to his or her special private gain or loss or that he or she knows would inure to the special private gain or loss of a principal by whom he or she is retained, a relative, or business associate. One is only retained by a principal when, as the definition requires, the principal directs one's conduct in exchange for compensation or other consideration. See, e.g., CEO 20-10 and CEO 84-107. . . .

**QUESTION 2:**

Will a prohibited conflict of interest be created for a member of the Monroe County Board of County Commissioners if a terminated contract between the County and the member's employer that was originally executed before the member's appointment to the Board is reinstated to settle litigation between the employer and the County, but with many contract provisions amended to include new terms, some mandated by state law and others required by the Federal government to make the contract eligible for Federal reimbursement?

This question is answered as follows.

In communications subsequent to your initial request for a formal advisory opinion, you have indicated that the County is considering a scenario whereby it settles the matter as described in Question 1, above, but, additionally, as part of the settlement of the lawsuit, the parties agree to amend certain provisions of the 2017 contract.

As you have explained in written and telephonic communications with Commission staff, the Federal Emergency Management Agency (FEMA) has authority to reimburse certain eligible contracts for disaster relief services between disaster relief service providers and state or local

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In Commissioner Raschein's case, Ashbritt is a principal by whom she is retained, given that the company is her employer. Therefore, any vote that would inure to Ashbritt's special private gain or loss will pose a voting conflict for her. You asked specifically about certain votes that may be scheduled for the Board of County Commissioners in the future. Any vote concerning the payment of legal fees or *the settlement of the litigation* would inure to Ashbritt's special private gain or loss because those matters directly affect the County's ability to pursue the litigation, which will necessarily affect the size of Ashbritt's recovery or liability in the lawsuit. . . .

Pursuant to Section 112.3143(3)(a), Florida Statutes, when Commissioner Raschein is presented with a voting conflict, she is required to publicly state to the assembly the nature of her interest in the matter, abstain from voting, and file a CE Form 8B, "Memorandum of Voting Conflict for County, Municipal and other Local Public Officers," with the person responsible for taking the minutes of the meetings of the Board of County Commissioners.

[Emphasis added. Internal footnotes omitted.]

governments when those contracts contain particular terms. FEMA provides suggested language for these contract provisions, but the suggested language need not be used word-for-word to effectuate eligibility for the reimbursement. According to you and your staff, because the wording of the suggested language is somewhat fungible, the phrasing of the amendments is technically negotiable, though, historically, the disaster relief companies that have contracted with the County have never attempted to negotiate the wording when the County has proposed amendments to remain eligible for FEMA reimbursement.

You explain that FEMA now requires more terms in disaster relief contracts to be eligible for reimbursement than it did when the 2017 contract was executed and, because of that, there is a compelling reason to amend the 2017 contract to include the additional terms suggested by FEMA—so the County will be eligible for the reimbursement of costs by FEMA. If the County and AshBritt reinstate the 2017 contract without amending it to comport to the FEMA requirements, the contract will be enforceable, but the County will not be eligible for Federal reimbursement for the disaster relief services provided by AshBritt. According to you and your staff, reinstating the 2017 contract without the amendments means forgoing reimbursements from FEMA, which, in turn, means the County could potentially incur tens of millions of dollars in otherwise-reimbursable costs.

Compliance with the FEMA requirements for reimbursement would require amending the 2017 contract to add terms spanning many topics: those requiring adherence to the standards of certain Federal laws, including the Contract Work Hours and Safety Standards Act, the Clean Air Act, the Byrd Anti-Lobbying Amendment, the Resource Conservation and Recovery Act, and the Energy Policy and Conservation Act; those requiring compliance with certain standards prohibiting contractors from purchasing communication devices produced by Huawei

Technologies Company or ZTE Corporation; and those allowing the Department of Homeland Security to access and inspect records and the vendor's staff.

According to you, if the 2017 contract is reinstated, the County also will be required by state laws implemented since 2017 to include additional terms that must be incorporated into certain vending contracts. These additions are separate and apart from the changes necessary to achieve FEMA reimbursement. These nondiscretionary terms, which are required by state law and set out in Section 287.135, Florida Statutes, include County options for early termination of the contract if AshBritt is placed on the "Scrutinized Companies that Boycott Israel List," the "Scrutinized Companies with Activities in Sudan List," or the "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List," or if AshBritt has been engaged in business operations in Cuba or Syria.

With this background, you ask whether the reinstatement of the 2017 contract will still benefit from the "grandfathering" described in the discussion of Question 1 if the contract is amended to comport to the FEMA requirements for reimbursement or the separate requirements set forth in state law.

We have consistently opined that "[t]he essential purpose of s. 112.313(7) is to prevent a public officer from using [his or her] official position to secure business for [his or her] private employer." CEO 76-118. We have kept this in mind whenever we have applied "grandfathering" to negate a conflict of interest resulting from the mechanical application of Section 112.313(7)(a) to a contract executed by a public agency *before* the public officer or employee assumed their public position. We have even applied grandfathering to allow contracts negotiated before one's assumption of public office or employment to be renewed *after* one's assumption of public office or employment. Prior to 2002, we allowed these contracts to be renewed without vitiating their

grandfathered status when the terms of the contract remained "substantially identical" to the original contract. See, e.g., CEO 76-118 (allowing the extension of a loan between the City and a bank to benefit from grandfathering "so long as the annual renegotiation of terms remains *substantially the same* as those in the original contract"); CEO 96-31 (allowing the assignment of a leasehold of city-owned property from one corporation to another owned by a member of the City council to benefit from grandfathering "as long as the terms of the lease agreement remain *substantially identical* to the terms of the lease agreement that was originally signed by the City"); and CEO 97-11 (allowing the renewal of a contract between the County and a County commissioner's law firm with an upward adjustment in the fees paid to benefit from grandfathering "as long as the terms of the contract remain *substantially the same*" [emphasis added]).

In 2002, we departed from that reasoning, instead requiring the terms of a contract to remain exactly "the same" to maintain grandfathering through a renewal occurring after the public officer or employee's assumption of their public position. See CEO 02-14 (allowing the extension of a school district's contract with an investment banking firm that marketed district bonds to benefit from grandfathering "provided the terms of the contract remain *the same* as those of the original") [emphasis added]. We have, since then, reiterated our view that the terms of a contract must remain precisely "the same" to maintain grandfathering. See CEO 03-17, footnote 6 ("We recognize that it might be difficult for the terms of a renewal to remain the same in your situation due to the original lease's providing for a renegotiation of rental rates regarding a renewal. However, since the issuance of CEO 96-31, we have clearly and recently stated our view that the terms of a renewal must remain the same." [emphasis in original]); see also CEO 08-4, footnote 6 and CEO 09-1.

In the scenario presented here, the terms to be added to the 2017 contract to achieve eligibility for FEMA reimbursement will create numerous, new obligations for the parties, particularly for AshBritt, and create new rights for early termination by the County. Furthermore, those addition of the terms will have the effect of creating a stronger business opportunity for the Commissioner's private employer, AshBritt, by ensuring the effective availability of a surety that will guarantee the reimbursement of tens of millions of dollars coming from the Federal government. Because the amended contract will not be the same as when it was executed in 2017, we find the inclusion of the terms to achieve eligibility for FEMA reimbursement would create a prohibited conflict of interest for the Commissioner under the first part of Section 112.313(7)(a) that cannot be negated by an application of grandfathering.

We contrast the inclusion of the FEMA terms, which is discretionary and potentially subject to negotiation, with the inclusion of the terms required by state law. Because you indicate the state law terms are required by law to be included in the contract, and given that their inclusion would confer no benefit on the private interests of the Commissioner's employer, we find that their inclusion would not vitiate grandfathering. Therefore, the addition of the state law terms will not create a prohibited conflict of interest for the Commissioner under the first part of Section 112.313(7)(a), provided that the rest of the contract remains the same.

Your questions are answered accordingly.

JG/sjz/ks

cc: Mr. Robert B. Shillinger  
Ms. Holly Merrill Raschein