

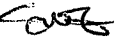
954-761-7469

SZELKOWITZ@GRAY-ROBINSON.COM

MEMORANDUM

TO: North Miami Community Redevelopment Agency Advisory Committee

CC: Frank Schnidman, Executive Director

FROM: Steven W. Zelkowitz, Esq. 

DATE: March 31, 2006

SUBJECT: Ethics Issues

As members of the North Miami Community Redevelopment Agency Advisory Committee ("CRAAC") there are two ethics issues which need to be presently addressed, as follows.

1. **Disclosure of Property Interests.** Pursuant to Article 1(d) of the CRAAC By-laws and in accordance with Section 163.367(2), Florida Statutes (copy attached), any CRAAC member who owns or controls property in the CRA Redevelopment Area must make a disclosure in the manner required by Florida law. The foregoing would include any residential property such as your home and any commercial property which you own individually or control through a business entity such as a corporation or limited liability company. If you are unsure as to the boundaries of the Redevelopment Area, CRA staff can provide you with assistance. In order to make the necessary disclosure, a public announcement needs to be made a CRAAC meeting and a Voting Conflict of Interest form needs to be completed and filed with the CRA Clerk (City Clerk). A copy of the Voting Conflict of Interest form and a Florida Commission on Ethics opinion regarding this matter are both attached for your reference.

2. **Voting Conflicts.** Article 4(l) of the CRAAC By-laws and Section 112.3143, Florida Statutes (copy attached), address voting conflicts of interest. Generally a voting conflict of interest exists if a special gain or loss could inure to the CRAAC member or relative or business associate. For example, if the action by the CRA would generally affect all properties in the Redevelopment Area equally, the measure would not inure to the special gain of any individual and no conflict would exist. The attached Florida Commission on Ethics opinion provides further detail on this issue. In the case of a voting conflict of interest, the CRAAC member must publicly announce the conflict at the CRAAC meeting prior to discussion by the CRAAC. The member cannot participate in the discussion of or vote on the item as a CRAAC

North Miami Community Redevelopment Agency Advisory Committee
March 31, 2006
Page 2

member. A Voting Conflict of Interest form must be filed with CRA Clerk (City Clerk) within 15 days of the meeting. Finally, the By-laws provide that the member may only speak on the item as a private citizen from the podium or place designated for the general public.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY COUNTY	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED	NAME OF POLITICAL SUBDIVISION:
	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, _____, hereby disclose that on _____, 20 ____:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

Select Year:

The 2005 Florida Statutes

Title XI
COUNTY ORGANIZATION AND
INTERGOVERNMENTAL RELATIONS

Chapter 163
INTERGOVERNMENTAL
PROGRAMS

View Entire
Chapter

163.367 Public officials, commissioners, and employees subject to code of ethics.--

(1) The officers, commissioners, and employees of a community redevelopment agency created by, or designated pursuant to, s. [163.356](#) or s. [163.357](#) shall be subject to the provisions and requirements of part III of chapter 112.

(2) If any such official, commissioner, or employee presently owns or controls, or owned or controlled within the preceding 2 years, any interest, direct or indirect, in any property which he or she knows is included or planned to be included in a community redevelopment area, he or she shall immediately disclose this fact in the manner provided in part III of chapter 112. Any disclosure required to be made by this section shall be made prior to taking any official action pursuant to this section.

(3) No commissioner or other officer of any community redevelopment agency, board, or commission exercising powers pursuant to this part shall hold any other public office under the county or municipality other than his or her commissionership or office with respect to such community redevelopment agency, board, or commission.

History.--s. 6, ch. 77-391; s. 76, ch. 79-400; s. 8, ch. 83-231; s. 905, ch. 95-147.

Copyright © 1995-2005 The Florida Legislature • [Privacy Statement](#) • [Contact Us](#)

Select Year:

The 2005 Florida Statutes

[Title X](#)
PUBLIC OFFICERS, EMPLOYEES,
AND RECORDS

[Chapter 112](#)
PUBLIC OFFICERS AND EMPLOYEES:
GENERAL PROVISIONS

[View Entire
Chapter](#)

112.3143 Voting conflicts.--

(1) As used in this section:

(a) "Public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(b) "Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(2) No state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, 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.

(3)(a) 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.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. [163.356](#) or s. [163.357](#), or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private

gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

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

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

(5) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

History.--s. 6, ch. 75-208; s. 2, ch. 84-318; s. 1, ch. 84-357; s. 2, ch. 86-148; s. 5, ch. 91-85; s. 3, ch. 94-277; s. 1408, ch. 95-147; s. 43, ch. 99-2.

CEO 86-13 -- February 20, 1986

VOTING CONFLICT OF INTEREST**CITY COMMUNITY REDEVELOPMENT AGENCY MEMBERS WITH INTEREST IN PROPERTY
WITHIN REDEVELOPMENT AREA**

To: *Mr. Paul H. Chipok, Assistant City Attorney, City of New Smyrna Beach*

SUMMARY:

Community redevelopment agency commissioners having an interest required to be disclosed under Section 163.367(2), Florida Statutes, immediately should file a memorandum of voting conflict disclosing the nature of that interest with the redevelopment agency and should announce the interest at a meeting of the agency, in accordance with Section 112.3143(3), Florida Statutes. If a commissioner subsequently is faced with a voting conflict under Section 112.3143(3), he is not required to abstain from voting but should publicly state his interest at the meeting and file a memorandum of voting conflict.

QUESTION:

What are the requirements in voting conflict of interest situations under Section 112.3143, Florida Statutes, for members of a community redevelopment agency who have interests in property located within a community redevelopment area?

Your question is answered by reference to the following provisions of law. Section 163.367, Florida Statutes (1985), provides:

(1) The officers, commissioners, and employees of a community redevelopment agency created by, or designated pursuant to, s. 163.356 or s. 163.357 shall be subject to the provisions and requirements of Part III of Chapter 112.

(2) If any such official, commissioner, or employee presently owns or controls, or owned or controlled within the preceding 2 years, any interest, direct or indirect, in any property which he knows is included or planned to be included in a community redevelopment area, he shall immediately disclose this fact in the manner provided in Part III of Chapter 112. Any disclosure required to be made by this section shall be made prior to taking any official action pursuant to this section.

(3) No commissioner or other officer of any community redevelopment agency, board, or commission exercising powers pursuant to this part shall hold any other public office under the county or municipality other than his commissionership or office with respect to such community redevelopment agency, board, or commission.

Section 112.3143, Florida Statutes (1985), provides:

(1) As used in this section, the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(2) Except as provided in subsection (3), no public officer is prohibited

from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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.

(3) No county, municipal, or other local public officer shall vote in his official capacity upon any measure which inures to his special private gain or shall knowingly vote in his official capacity upon any measure which inures to the special gain of any principal, other than an agency as defined in s. 112.312(2), by whom he is retained. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his 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. However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357 or an officer of an independent special tax district elected on a one-acre, one-vote basis is not prohibited from voting.

Section 163.367(2) requires a community redevelopment agency member to disclose immediately in the manner provided in Part III, Chapter 112, Florida Statutes, the fact that he presently owns or controls, or owned or controlled within the preceding two years, any direct or indirect interest in any property which he knows is included or planned to be included in a community redevelopment area. Although Part III of Chapter 112 (the Code of Ethics for Public Officers and Employees) contains several provisions requiring the disclosure of private financial interests, none of these provisions specifically relate to the disclosure of an interest in real property which may be affected by the actions of one's agency. However, the provision which would appear most relevant for local officials is Section 112.3143(3), which requires a public announcement at a meeting of one's agency, as well as the filing of a memorandum to be incorporated in the minutes of the meeting. Therefore, it is our view that a community redevelopment agency member who has an interest which must be disclosed under Section 163.367(2) should make that disclosure in the manner provided in Section 112.3143(3), as outlined above.

In addition to the requirements of Section 163.367(2), members of a community redevelopment agency are bound by the requirements of Section 112.3143. Section 112.3143(3) generally requires a local official to abstain from voting on matters in which he has a conflict of interest, to announce publicly the nature of the conflict, and to file a written memorandum within 15 days as part of the minutes of the meeting. Commissioners of community redevelopment agencies, however, specifically are not prohibited from voting. Therefore, such commissioners may vote on matters affecting their interests but still would be required to publicly announce the conflict and file a voting conflict memorandum.

We do not understand that any action taken by the redevelopment agency necessarily would affect all property located in the area or necessarily would trigger the disclosure requirements of Section 112.3143(3). Disclosures under that provision are required only where the measure under consideration would inure to the "special private gain" of the commissioner or to the "special gain of any principal . . . by whom he is retained." As we advised in CEO 85-5, CEO 85-62, and CEO 85-87, the question of whether a particular measure will result in "special" gain generally will turn on the size of the class of persons benefited and the nature and extent of any gain received. Clearly, if the measure under consideration by the redevelopment agency would affect only property in which a commissioner has an interest, the commissioner would be required to announce the conflict and file a voting conflict memorandum. On the other hand, for example, if the measure under consideration involved improvements which would affect all property in the redevelopment area equally, the measure would not inure to the "special" gain of any property owner.

Accordingly, if a community redevelopment agency commissioner has an interest required to be disclosed under Section 163.367, Florida Statutes, the commissioner immediately should file a memorandum of voting conflict disclosing the nature of his interest with the redevelopment agency and should announce his interest at a meeting of the agency. The necessity of making an oral announcement at a meeting and of filing a voting conflict memorandum on a particular matter coming before the agency would have to be determined on a case-by-case basis. As you have provided no details regarding any particular matter coming before the Community Redevelopment Agency, we are unable to give more specific advice.