

City councilmember's participation in litigation

Number: INFORMAL

Date: July 31, 1998

Mr. Lawrence R. Metsch
Attorney for the Village of El Portal
1365 Northwest 15 Street
Miami, Florida 33125

RE: MUNICIPALITIES--CITY COUNCIL MEMBERS--LITIGATION--council member's participation in litigation as disqualification to serve on council.

Dear Mr. Metsch:

Thank you for contacting this office regarding whether a city council member is disqualified from serving in that capacity because of litigation he has filed against the city. Attorney General Butterworth has asked me to respond to your letter.

After reviewing the information you have submitted, I must advise you that no statute of which I am aware makes participation in litigation a disqualifying factor for public service. However, the Florida Constitution and the statutes do establish ethical guidelines which must be followed by all public officers and these may affect your situation.

Article II, section 8(f) and (h)(3), Florida Constitution, establishes an independent Florida Commission on Ethics to "conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees" Part III, Chapter 112, Florida Statutes, is the Code of Ethics for Public Officers and Employees, which is interpreted and administered by the Ethics Commission. A "[b]reach of the public trust" for purposes of the Ethics Code means "a violation of a provision of the State Constitution or this part which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of s. 8, Art. II of the State Constitution or of this part." [1]

Among the provisions of the Code of Ethics is section 112.313, Florida Statutes, which sets forth standards of conduct for public officers, employees of agencies, and local government attorneys. Under this section certain prohibited activities are described such as solicitation or acceptance of gifts, doing business with one's own agency and occupation of conflicting employment or contractual relationships. Further, section 112.3143(3)(a), Florida Statutes, provides that

"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, . . . 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." [2]

Clearly, in the prosecution of a private lawsuit against the governmental entity upon which a public officer serves, situations may arise in which there is a question of "conflicts between public duties and private interests[.]" When such a situation exists, the public officer must be guided by the Code of Ethics. The Ethics Code may require a public officer to reveal his or her interest in a matter and may preclude that officer from voting on the issue. However, this office may not anticipate when such problems may arise or how they should be resolved.

A request for interpretation of particular provisions of the Ethics Code or their application must be addressed directly to the Florida Commission on Ethics at the following address:

Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

In addition, the commission publishes its previously issued opinions and copies may be requested by calling (850) 488-7864.

I trust that this informal advisory opinion will assist you in resolving this matter.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] Section 112.312(3), Fla. Stat.

[2] *And see* s. 286.012, Fla. Stat., providing that

"No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143."