

Legislators, constituent's court cases

Number: INFORMAL

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The Honorable Debra A. Prewitt
Representative, District 46
5623 U.S. Highway 19, Suite 109A
New Port Richey, Florida 34652-3700

Dear Representative Prewitt:

Thank you for contacting this office for assistance regarding the appropriateness of your intervention in ongoing court cases on behalf of constituents. According to your letter you have received calls from constituents requesting that you contact judges in their cases to urge these judges to take particular action. You have asked this office for some direction in evaluating these requests.

Resolution of this issue is primarily controlled by section 112.313, Florida Statutes (1995). As a section of the Code of Ethics for Public Officers and Employees[1] any binding opinion interpreting this statute must be requested from the Commission on Ethics. However, the following informal comments may be helpful to you and avoid the necessity of a formal ethics opinion.

The Rules of the Florida House of Representatives provide that "[a] Member shall scrupulously comply with the requirements of all laws related to the ethics of public officers." [2] Thus, members of the Legislature are subject to the Code of Ethics for Public Officers and Employees, codified in Part III, Chapter 112, Florida Statutes (1995). [3]

In adopting a code of ethics for public officers and employees the Legislature declared that it is the policy of the state that:

"[P]ublic officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern." [4]

With regard to the use of a public position by the officer holding that position, section 112.313(6), Florida Statutes, states that:

"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."[5]

Thus, a legislator may not corruptly use her position as a legislator to secure a benefit for either herself or for a constituent.

The statute prohibits the "corrupt" use of official position and that term is defined to mean "done with a wrongful intent and for the purpose of obtaining . . . 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] *Ex parte* communications by legislators with judges involved in ongoing litigation may suggest various motivations which could come within the scope of this provision, therefore, the most prudent course is to avoid such communications.

For a more extensive treatment of this issue you may wish to contact the Ethics Commission or the General Counsel for the House of Representatives. However, I hope that these informal comments will provide you with some direction in dealing with requests from constituents for your official intervention on their behalf when they are involved in ongoing court cases.

Sincerely,

Robert A. Butterworth
Attorney General
RAB/tgk

[1] Part III, Ch. 112, Fla. Stat. (1995), is designated the Code of Ethics for Public Officers and Employees.

[2] Rule of the Florida House of Representatives 5.14. *And see* Rule 5.12, which provides that a member of the Legislature may not "engage in any activity for personal gain which would be an abuse of the Member's official position as a Member or a violation of the trust or authority placed in the Member either by the public or by his colleagues."

[3] *And see* s. 112.312(2), Fla. Stat. (1995), defining "[a]gency" to include legislative entities of the state; and s. 112.311(6), Fla. Stat. (1995).

[4] Section 112.311(6), Fla. Stat. (1995).

[5] Section 104.31(1)(a), Fla. Stat. (1995), provides that no state officer may use his or her official authority or influence for the purpose of coercing or influencing another person's vote.

[6] Section 112.312(9), Fla. Stat. (1995).