

CEO 06-20 ---- October 25, 2006

VOTING CONFLICT**COUNTY COMMISSIONER VOTING ON MEASURES
CONCERNING PROPOSED JUDICIAL COMPLEX
NEAR HER PROPERTIES***To: Name withheld at person's request (Fort Lauderdale)***SUMMARY:**

(LIEBOWITZ)

A county commissioner is not presented with a voting conflict under Section 112.3143(3) (a), Florida Statutes, regarding votes/measures of the county commission concerning a proposed county judicial complex to be located near properties owned by her and her husband's companies. Under the circumstances, any gain or loss to the commissioner or her husband is "remote and speculative" or is not "special." CEOs 85-77, 85-87, 86-44, 88-31, 89-32, 05-3, 05-17, and 06-8 are referenced and CEO 01-8 is distinguished.¹

QUESTION:

Would a county commissioner be presented with a voting conflict regarding votes/measures concerning a proposed county judicial complex to be located near properties owned by companies owned by the commissioner and her husband?

Under the circumstances presented in your inquiry, this question is answered in the negative.

By your letter of inquiry, a memorandum and a map accompanying your letter, and additional information provided in response to questions from our staff, we are advised that you seek our opinion in behalf of ..., who serves as a member of the Broward County Commission. In addition, we are advised that the Commissioner and her husband own one hundred percent of a company and fifty percent of another company, with each company owning a property in Fort Lauderdale. Further, we are advised that both properties are near a proposed new judicial complex which would be built to replace the existing County courthouse across the street directly south of the existing courthouse. Also, we are advised that one of the properties is one floor of a five-story office condominium located approximately two blocks from the proposed complex, that the property is zoned for office use, and that there are no current proposed plans to redevelop the property or to change its zoning. The other property consists of three improved lots located approximately five blocks from the proposed complex, zoned "residential office."² Further, you advise that in the area surrounding the existing courthouse and the proposed new complex site (New River south to Davie Boulevard, railroad tracks east to Federal Highway), there are approximately 488 individual properties (1158 property owners) and that most of the properties near the proposed complex, including the properties between the proposed complex and the properties owned by the Commissioner's companies, are used for commercial or office purposes.³

Therefore, you inquire for the Commissioner whether she had and whether she will be presented with a voting conflict regarding votes/measures of the County Commission concerning the proposed complex and related matters,⁴ due to her connection to the two properties.

Section 112.3143(3)(a), Florida Statutes, the portion of the voting conflicts law [contained within the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes)]

applicable to local, elected public officers such as county commissioners, provides:

VOTING CONFLICTS.-No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

The law requires the Commissioner's declaration of conflict, abstention from voting, and timely filing of CE Form 8B (memorandum of voting conflict) regarding measures of the County Commission which would inure to her special private gain or loss.⁵

In accord with our previous decisions, we find that the Commissioner was not and is not presented with a voting conflict based on her companies' ownership of the two properties.⁶ Under the circumstances presented, including the Commissioner's properties not being undeveloped, including none of her properties being the property addressed by votes/measures of the County Commission (none of her properties being the site of the existing or proposed judicial complex), and including her properties comprising a very few of many similar properties in the area, we find that any gain or loss to the Commissioner or her husband would be "remote or speculative" or would not be "special." See CEO 06-8, a very recent opinion of ours in which we made a similar finding of no voting conflict where a city councilman was confronted with measures of the city council concerning redevelopment of a city-owned parcel located near properties owned by the councilman or his father.⁷ See also CEO 05-17 (airport authority member voting on road project near her business), CEO 05-3 (county commissioner and relatives owning interests in parcels near proposed road), CEO 89-32 (city commissioner voting on proposed development near his restaurant), CEO 88-31 (city commissioner voting on annexation of property which adjoins property in which she owns an interest), CEO 86-44 (city council member voting on site plan for shopping center adjacent to his property), CEO 85-87 (city council member voting on redevelopment of property located next to bank which employs him), and CEO 85-77 (school board member owning business near proposed location of school district administrative complex).

Accordingly, under the circumstances, we find that the Commissioner was not and will not be presented with a voting conflict requiring her abstention and compliance with Section 112.3143(3)(a), Florida Statutes, regarding measures concerning the proposed judicial complex.

ORDERED by the State of Florida Commission on Ethics meeting in public session on October 20, 2006 and **RENDERED** this 25th day of October, 2006.

Norm M. Ostrau, Chairman

[1] Prior opinions of the Commission on Ethics are viewable on its website: www.ethics.state.fl.us

[2] You advise that the property consisting of the three improved lots is under a sales contract which has not closed, that the contract may not close for reasons unrelated to the proposed complex, and that closing of the contract is not contingent upon the outcome of the November 2006 ballot measure on the complex and is not contingent upon any vote of the County Commission. Further, you advise that neither the Commissioner, her husband, nor their corporations have any other contracts similar to the referenced sales contract, and that the Commissioner states that to her knowledge there are no facts unique to her, her husband, or their corporations that would take them out from under the Commission on Ethics' "size-of-the-class" reasoning.

[3] The map you provided shows that both of the Commissioner's companies' properties are located to the south of the existing courthouse and the site of the proposed complex, and that they are separated from the courthouse and the new complex site by streets and properties of other owners.

[4] Regarding past votes, you advise that on August 15, 2006 the County Commission voted to place a referendum on the November 2006 ballot with respect to financing the proposed complex (with the Commissioner abstaining) and that on September 19, 2006 the County Commission approved certain activities, to be performed in-house, to educate voters on upcoming referendum issues including judicial complex funding (with the Commissioner voting based on your office's advice that she had no voting conflict).

[5] The law also encompasses special private gain or loss to an official's "relative" (e.g., husband) as defined in Section 112.3143(1)(b), Florida Statutes, and to one's "business associate" (e.g., a fellow closely-held corporate shareholder carrying on a business enterprise with a public officer) as defined in Section 112.312(4), Florida Statutes.

[6] We find that the fact that corporations in which the Commissioner and her husband own substantial interests, rather than the Commissioner and her husband as natural persons, hold title to or own the "legal interests" in the properties is of no consequence to our analysis herein under the voting conflicts law, inasmuch as any gain or loss to such an entity necessarily constitutes gain or loss to persons owning substantial interests in such an entity. CEO 84-108 (Question 2) and CEO 85-41 are in accord with our finding in this regard.

[7] As in CEO 06-8, in finding no voting conflict in the instant inquiry, we distinguish our finding rendered in CEO 01-8 (village council member voting on matters concerning property adjoining his on which the village council proposes to build a governmental center). Unlike the instant inquiry or the inquiry in CEO 06-8, in which the public officer and her or his relative own developed properties, the situation in CEO 01-8 involved the village council member's property being the only large, undeveloped parcel of property left adjacent to the public property project, a situation which supported a possible voting conflict.