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THE ETHICS OF GIFTS

By: Herb Thiele, County Attorney

While local elected officials are aware of significant restrictions which apply to their actions as an elected official, it is not always evident that certain ethics rules also apply to ALL County employees.

This is specifically true with regard to [Leon County Policy No. 03-05](#), the "Leon County Code of Ethics." In the preamble to the Code of Ethics, it is stated that "it shall be the policy of the Board of County Commissioners of Leon County, Florida, that this policy shall apply to the members of the Board of County Commissioners and its employees, as well as to all members of appointed boards and committees that have been created by the Board of County Commissioners." In addition, the Florida Statutes state, in [Chapter 112](#) (Code of Ethics for Public Officers and Employees), that it applies to elected or appointed persons who hold office in any local government, including any person serving on an advisory body. While Florida Statutes does not define "employee," case law has supported the proposition that public employees of local governments are equally subject to Chapter 112, Florida Statutes.

With that being the background, attention should be paid to all parts of the Leon County Code of Ethics, and the Florida Statutes, Chapter 112. For purposes of this article, our focus is going to be on restrictions on gifts.

The Leon County Code of Ethics in Section 5, "Definitions," (XII) provides a list of items which are considered gifts under the code, including but not limited to, tangible or intangible personal property, transportation, food or beverage, memberships dues, entrance fees, floral arrangements, or other personal services for which a fee is normally charged by the person providing those services. "Gifts" under the Code of Ethics does not include the employee's salary, benefits, services, fees, or other matters received from the employee's employer.

In Section 6, "Standard of Conduct," the Leon County Code of Ethics clearly states that "No County Officer or County Employee shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor or service, based upon any understanding

that the vote, official action, or judgment of the County Officer, County Employee...would be influenced thereby."

Chapter 112, Florida Statutes, also places restrictions on individuals who are deemed to be "reporting individuals" (those who generally are required to file annual Financial Disclosure forms) and includes all elected officials, many appointed officials to advisory bodies or decision making bodies, and certain designated employees of the County such as the County Administrator, the County Attorney, the Chief Building Official, the Purchasing Director, and others. While these individuals are both prohibited from soliciting a gift, or accepting a gift of value which is intended to influence the official action of those officials or employees, these individuals are also required to report gifts which are received by themselves, their spouses, or minor children (but not other relatives as defined in the Florida Statutes).

In addition to the gift prohibition, [Florida Statutes §112.313\(4\)](#) prohibits employees and public officials of local government, along with their spouses or minor children from accepting any compensation, payment or thing of value when such employee or public officer knows, or with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer or employee was expected to participate in his or her official capacity.

While many jurisdictions have adopted a "no gift policy" no matter the value of the gift, the Leon County Code of Ethics does not make such restrictions. However, in all instances, employees should be cautious when they accept anything of value when you believe it is being done for purposes of influencing you in the performance of your job duties. Not only could this result in a violation of the Board of County Commissioners' policy, but also a violation of the Florida Statutes, which can be pursued by the Commission on Ethics.

It is thus our recommendation that no gifts be accepted by you, your spouse or minor children for any reason except from your relatives. To the extent that there is ever a question with regard to the acceptance of a thing of value, please contact the Leon County Attorney's Office and we will be glad to provide you with any additional guidance.

Legislature Imposes New Requirement on Citizen Committees

By: Laura Youmans, Assistant County Attorney

During the 2013 session, the Florida Legislature adopted [Sec. 286.0114, Florida Statutes](#), which requires that many of Leon County's committees allow public comment at their meetings. Most of the County's committees already provide time for public comment and, for those committees, no additional action should be necessary. For boards or committees that are subject to these new requirements, and who do not already allow time for public comment, we recommend that time be reserved at the beginning of each meeting to allow members of the public to address the committee.

Senate Bill 50, codified at Sec. 286.0114, requires that members of the public be given a reasonable opportunity to be heard at meetings of public boards or commissions. The opportunity to be heard does not have to take place at the same meeting that action is taken on an issue; however, the opportunity to speak should be afforded at a meeting held during the decision-making process and within a reasonable time of the meeting at which official action on that issue is taken. The statute allows for legal action to enforce the reasonable opportunity to be heard and awards attorney fees should a board or commission be found to have violated the section.

Affected Committees:

Sec. 286.0114 applies to those committees that are classified as Decision Making under [Leon County Board Policy No. 03-15](#), which governs citizen committees. Policy No. 03-15 distinguishes between Decision Making Committees and Focus Groups.

Sec. 286.0114 applies to Decision Making Committees, which are generally defined as a committee that conducts a vote to either make its final recommendations to the Board as directed in its Bylaws, or make a final binding decision without returning to the Board. However, Sec. 286.0114 may also apply to a Focus Group in limited situations. Since Focus Groups do not take official actions on behalf of the Board of County Commissioners, meetings of these groups are not required to be subject to requirements of Sec. 286.011, "the Sunshine Law." Pursuant to Sec. 286.0114 (c), meetings exempt from the Sunshine Law do not have to comply with the requirement for an

opportunity to be heard. However, the bylaws of many of the County's Focus Groups make them subject to the Sunshine Law, even though they are Focus Groups. If a committee's bylaws require compliance with the Sunshine Law, the committee should allow public comment at meetings. Naturally, those committees not required to allow citizens to be heard may still do so at the discretion of the committee.

Quasi-judicial activities are also excluded from the requirement that boards or committees allow public comment. Sec. 286.0114(3)(d) exempts those boards or commissions acting in a quasi-judicial capacity from the new requirement. The term "quasi-judicial" is defined as follows:

A term applied to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.

The Code Enforcement Board, Contractor's Licensing Board, and Board of Adjustment and Appeals are examples of entities that generally handle quasi-judicial matters and are, therefore, exempt from the requirements of this section.

Implementation:

For those committees subject to the public comment requirement, we recommend that the agenda for each meeting should allocate time, preferably at the start of each meeting, to allow an opportunity for members of the public to provide comment on items that will be considered at that meeting or which may come before the committee. This part of the meeting may be referred to as the "Public Comment" or "Citizens to be Heard" portion of the agenda. Committees may adopt rules to govern the conduct of the public comment portion of the agenda. If a board or committee adopts rules of procedure and follows those rules, it will be deemed in compliance with the statute. Please feel free to contact the County Attorney's Office if you have any questions about this new requirement and remember that our office is always available to discuss Sunshine Law requirements with staff or committee members.

Leon County “Home Rule” History

By: Herb Thiele, County Attorney

As many of you know, the territory encompassing Florida was transferred to the United States from Spain in 1821. Provisional Governor Andrew Jackson, by ordinance, created Escambia and St. Johns counties in July of 1821. This ordinance also established the county form of government in Florida, with a judicial system of County Judges, Clerks and Sheriffs.

Florida became the 27th state of the union in 1845 and was organized and governed by the 1838 Florida Constitution. Counties, although in existence, were not included in the 1838 Constitution. It was not until 1968 that a new Constitution was proposed and adopted by Floridians.

Counties are political subdivisions of the State of Florida and may be created, abolished or changed by law. Prior to the 1968 Florida Constitution, a treatise by Judge Dillon of Iowa written in 1911 provided the guidance for the powers of local governments. Under the “Dillon Rule” local governments only possessed those powers that were expressly delegated to it from the sovereign state, those necessarily implied from the express grant, or those implied from the local government’s very existence. The concept of the Dillon Rule, from a practical standpoint, created the need for local government to seek additional authority to do virtually anything from the state legislature on an annual basis. For example, in *Malone v. City of Quincy* (1913), the City of Quincy endeavored to regulate and prohibit in certain locations “earth closets.” The Florida Supreme Court found that in the absence of express authority to do so, a municipality could only exercise such authority as was conferred by law. Thus, the Court struck down the authority of the City of Quincy to enact such an ordinance.

From a national trend towards “home rule,” the Florida Constitutional Revision Commission, in 1968, proposed providing home rule to all local governments, including both municipalities and counties. Upon the approval by the electors in Florida of the 1968 Constitution, real home rule for local governments was established. This reversed the Dillon Rule. In the [Florida Constitution](#), non-charter counties have “such power of self-government as is provided by general or special law.” However, charter counties, like Leon County, have all the powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. In addition, [Section 125.01 of the Florida Statutes](#) by design and intent is a general law grant of expansive home rule authority to all Florida counties.

The following is a summary of the constitutional and

statutory home rule power of counties and municipalities, the power of the Florida Legislature to restrict or diminish such home rule power, and the expanded home rule power possessed by charter counties, such as Leon County:

- The constitutional home rule powers of all counties and municipalities cannot be inconsistent with general law.
- The power of local self-government of charter counties is derived from the Florida Constitution and can be diminished by special act only if the special act is approved by a vote of the electors.
- The power of local self-government provided by general law for municipalities and non-charter counties can be preempted by special act.
- A county charter can contain limitations on county power not inconsistent with general law that apply only to that charter county.
- The ordinance of a non-charter county that is in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.
- A county charter can provide which shall prevail in the event of a conflict between a county and a municipal ordinance. A county charter providing for countywide regulatory authority that preempts inconsistent municipal action requires elector approval only in a single countywide vote. A county charter that attempts to transfer municipal services to a county requires dual approval by electors countywide and within each municipality under judicial construction of the transfer of power provisions of Article VIII, section 4, Florida Constitution.
- A charter county is vested with the authority to levy any tax within its jurisdiction that the Legislature authorizes for a municipality unless a contrary legislative intent is provided in the tax authorization.

Home rule needed a boost by the Florida Legislature for municipalities following a case by the Florida Supreme Court in 1972 entitled *City of Miami Beach v. Fleetwood Hotel, Inc.*, which provided a very narrow rule of the constitutional home rule interpretation for cities. Thereafter, the Florida Legislature enacted the “Municipal Home Rule Powers Act” ([Florida Statutes §166.021](#)) in order to assure a broad grant of power to municipalities in recognition and implementation of the provisions of Article VIII, Section 2(b) of the Florida Constitution.

As stated above, a charter county, such as Leon County,

receives a direct constitutional grant of the power of local self-government upon charter approval, and has more expansive home rule authority than non-charter counties in several fundamental ways. First, the Legislature cannot, by special act, diminish the power of local self-government constitutionally granted Leon County unless the special act is approved by the County's voters. Secondly, the County's charter may grant to the County the power to regulate an activity county-wide and provide that such regulation prevails over a conflicting municipal ordinance. In Leon County, the provision in the county charter specifically allows the City of Tallahassee's ordinances to prevail within the city limits if there is a conflict, except for minimum environmental regulations where the County ordinances prevail ([Leon County Charter Section 1.6\(2\)](#)). Additionally, a charter county is vested with the authority to levy any tax within

its jurisdiction that is authorized by general law for a municipality unless the tax itself precludes county and position. Thus, one of the essential distinctions between a charter county and a non-charter county is the constitutional vesting of municipal powers in charter counties by the 1968 Constitutional revision. It should be noted that a county charter can also change the method by which a county office is chosen or abolish any county office where all duties of the office as provided by general law are transferred to another office. This could not be accomplished by a non-charter county except by special act of the Legislature approved by the electors.

Finally, since the enactment of the 1968 Constitution, home rule reigns supreme throughout Florida for local governments, including county governments with county charters, such as Leon County.

BEYOND THE OFFICE



The County Attorney's Office's latest stop on our getting to know you breakfast tour was at the LeRoy Collins Library.

We had a great time meeting the staff, learning about all the programs, resources, and volunteer opportunities that they provide. We also received a very informative behind the scenes look at

how everything works.

If you are interested in scheduling a visit with your Department please contact our Legal Administrator, Marcia Labat, either by phone or email at labatm@leoncountyfl.gov.



Present (from left to right): LaShawn Riggans, Patrick Kinni, Dan Rigo, Laura Youmans. Present but not pictured, Herb Thiele.

The Leon County Attorney's Office emerged victorious for the second year in a row winning the "Best Margarita" competition at the 18th Annual Tallahassee Bar Association Chili Cook-off. The "Bootlegging Barristers" were bedecked in 1920's regalia as part of our overall theme. The margarita, a specialty of Assistant County Attorney LaShawn Riggans, competed in a strong field but was again the hands-down winner.

Although the Bootleg Chili, prepared by Assistant County Attorney Laura Youmans, did not place this year, it received rave reviews which was supported by repeat samplers and the empty crock pots!

The Tallahassee Bar Association Chili Cook-off is held every year and proceeds go to support the Legal Aid Foundation, which provides free legal assistance to Leon County residents who are unable to afford an attorney.

Please direct all questions, comments, and submission requests to LaShawn Riggans at: LegalAdvisor@leoncountyfl.gov



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