

CEO 13-25 –December 18, 2013

MISUSE OF POSITION

LETTERS OF SUPPORT WRITTEN ON OFFICIAL STATIONERY

To: The Honorable Wilton Simpson, Member, Florida Senate, 18th District

SUMMARY:

A Senator's providing a letter of support for grant funding or for a hospice's certificate of need application would not violate Section 112.313(6), Florida Statutes. CEO 99-8 is referenced.

QUESTION:

Would letters of support for a grant application or for a hospice's certificate of need violate Section 112.313(6), Florida Statutes, were they to be written on official stationery?

Your question is answered in the negative.

You write that you are a member of the Florida Senate, and you inquire whether two letters that you would like to send, on your official Senate letterhead, to State agencies, would violate any provision of the Code of Ethics. The first is a letter you were asked by a constituent to write to the Agency for Health Care Administration. In it, you express your support for a Certificate of Need (CON) for Hospice of Citrus County, Inc. In telephone conversations between our staff and your office, you indicated that you have no business or employment relationship with Hospice, do not sit on its board, and are not being compensated for writing this letter or in any other capacity. Rather, you advise, you simply believe in the entity's mission.

The second letter is to the Florida Highway Beautification Council, a seven-member body within the Department of Transportation. In this letter, you express support for the Beautification Grant application submitted by the City of Dade City. As with the previous case, you indicate you have no business relationship or other interest in the applicant, other than your belief in the project, and are not compensated by Dade City.

The only provision of the Code implicated here is Section 112.313(6), Florida Statutes, which provides as follows:

MISUSE OF PUBLIC POSITION.--No public officer or employee of an agency 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.

For purposes of this provision, the term "corruptly" is defined as follows:

'Corruptly' means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, 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. [Section 112.312(9), Florida Statutes.]

This provision prohibits you from using or attempting to use your official position as a member of the Senate, or any resources which may be within your trust, to secure a special privilege or benefit for yourself or another, where your actions are taken with wrongful intent and for the purpose of obtaining a benefit for yourself or another and are inconsistent with the proper performance of your public duties. Your Senate General Counsel has very prudently advised members to be cautious in lending the prestige of their office in support of the endeavors of others, out of a concern that such could constitute a misuse of position.

We addressed a very similar question in CEO 99-8. There, a Clerk of Court inquired whether it would violate the Code of Ethics were she to write letters of reference, either on plain stationery, on stationery she purchased herself but which identified her as Clerk, or on official stationery. We noted, as we have in the past, that the act of identifying oneself as an officeholder is a "use" of that office, and that as such, a reference to one's title—either by using letterhead or otherwise—is a use of position. We advised "[w]e are of the opinion that whether a corrupt misuse of official position has occurred in a given situation depends on how and for what purpose the stationery will be used, rather than upon the fact of its use." The issue, we found, lay with the context in which the official's public position is referenced,

Either way, the recipient of the letter is informed of the Council member's public position. This may be appropriate, as in the political contexts noted above, or it may be inappropriate, for example, if the letter were being sent to settle a strictly private dispute with a debtor or creditor.

In CEO 99-8 the context involved letters of recommendation having nothing to do with the business of the Clerk's office, and we found that such letters have long been considered a part of an official's public duties. Under these circumstances, we found that the Clerk's use of official stationery to write such letters would not be inconsistent with the proper performance of her public duties, absent a showing that the action was undertaken to improperly benefit the official or another. As was true in that opinion, in this case there is no suggestion of any quid pro quo in exchange for the letters of support, there is no indication of any benefit to you other than the incidental political benefit of the goodwill of the constituent, and there appears to be no law, rule, or policy which prohibits such use of resources.

Accordingly, we find that under these circumstances, the letters you propose would not violate any provision of the Code of Ethics for Public Officers and Employees.

ORDERED by the State of Florida Commission on Ethics meeting in public session on December 13, 2013, and **RENDERED** this 18th day of December, 2013.

Morgan R. Bentley, *Chairman*