

DATE FILED

APR 24 2024

COMMISSION ON ETHICS

BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

In re DAVID ALFIN,  
  
Respondent.

Complaint No. 24-018

PUBLIC REPORT AND ORDER DISMISSING COMPLAINT

On Friday, April 19, 2024, the Commission on Ethics met in its executive session and considered this complaint for legal sufficiency pursuant to Commission Rule 34-5.002, F.A.C. The Commission's review was limited to questions of jurisdiction of the Commission and of the adequacy of the details of the complaint to allege a violation of the Code of Ethics for Public Officers and Employees. No factual investigation preceded the review, and therefore the Commission's conclusions do not reflect on the accuracy of the allegations of the complaint.

The Commission voted to dismiss the complaint for lack of legal sufficiency, based on the following analysis:

1. This complaint was filed by Darlene Shelley of Palm Coast, Florida.
2. The Respondent, David Alfin, allegedly serves as the Mayor for the City of Palm Coast.
3. The complaint claims the Respondent is employed as a real estate broker and/or in sales for a real estate company. The complaint claims he voted on several measures brought before the City Council where another employee of the real estate company was the applicant and/or initiated the matter leading to the vote, although there is no allegation that the real estate company

was involved. The complaint claims these allegations constitute violations of Section 112.3143, Florida Statutes.

4. The allegations in paragraph 3 fail to provide a legally sufficient basis for investigation under Section 112.3143(3), Florida Statutes, which is the portion of the voting conflicts law applicable to local officer such as the Respondent. Section 112.3143(3)(a) states:

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.

For the statute to apply, the vote in question must inure to the special private gain or loss of the public officer, or the public officer must know the vote will inure to the special private gain or loss of a principal by whom the public officer is retained, a relative, or a business associate. Importantly, Section 112.3143(1)(d), Florida Statutes, defines "special private gain or loss" as "an economic benefit or harm[.]"

5. Here, the allegations in paragraph 3 fail to indicate a possible violation of Section 112.3143(3). The complaint asserts the Respondent and his co-worker at the real estate company are "business associates," and, therefore, that he violated Section 112.3143(3)(a) by voting on measures concerning applications or matters that his co-worker initiated. However, the phrase "business associate" is defined in Section 112.312(4), Florida Statutes, to include only "[a] person

or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate, as a partner, joint venture, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property." We have found this definition is narrow by design, stating:

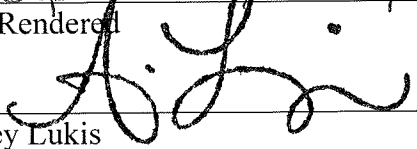
It is apparent from its language that the definition was intended to bring within the reach of the law partnership endeavors or similar enterprises in which individuals or business entities combine themselves, through enumerated vehicles (e.g., holders of non-publicly-traded stock of a close corporation), relationships previously absent from the law's reach, and that it was not intended to reach situations where several persons merely hold similar responsibilities for the same corporate entity or situations where they merely occupy a nominal status in relation to each other.

CEO 08-4, Question 5 (emphasis added); see, also, CEO 01-17. Here, even assuming the Respondent and the co-worker are employed by the same real estate company, there is no indication that they occupy at that company—or in any other context—a type of relationship specifically enumerated by the statutory definition. In particular, there is no claim that they are partners or co-owners of the company, only that they are co-workers there. This relationship, where they simply hold responsibilities for the same corporate entity and, essentially, occupy a nominal status there in relation to each other, is not sufficient to constitute a "business associate" relationship for purposes of the statute. Accordingly, there is not a legally sufficient basis here to conduct an investigation here under Section 112.3143(3)(a).<sup>1</sup>

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<sup>1</sup> We note the complaint also alleges the Respondent accepted a campaign contribution from the real estate company that employs him. It is unclear from the complaint how this contribution relates to the allegations of a voting conflict. We note that while a voting conflict can exist if a measure will bring special private gain or loss to a principal, there is no explanation in the complaint of how the votes in question affected the Respondent's employer, and a voting conflict does not exist when one votes on matters concerning a campaign contributor. See CEO 75-181 and CEO 78-20, Question 2.

ORDERED by the State of Florida Commission on Ethics meeting in executive session  
on Friday, April 19, 2024.

April 24 2024  
Date Rendered  
  
Ashley Lukis  
*Chair, Florida Commission on Ethics*

AL/gps

cc: Mr. Mark Herron, Attorney for Respondent  
Ms. Darlene Shelley, Complainant