

FILE 2817 – June 6, 2025

CONFLICT OF INTEREST

SCHOOL BOARD MEMBER AND PRIVATE BUSINESS OWNER VOLUNTEERING ON BEHALF OF HER PRIVATE BUSINESS AND PROMOTING HER PRIVATE BUSINESS WITHIN HER DISTRICT'S SCHOOLS

To: Name withheld at person's request (Flagler County)

SUMMARY:

Where a School Board Member also owns a private business, the School Board Member and/or her employees may volunteer on behalf of her business within her own District's schools; however, the School Board Member and/or her employees may not market or promote the private business while volunteering, as the sale of her private business's services to District students would violate the second prohibition within Section 112.313(7)(a), Florida Statutes. Additionally, the School Board Member may not hire School District teachers or employees to work for her private business, as that would also amount to a violation of the second part of Section 112.313(7)(a). Finally, the School Board Member's business may not sponsor a District school's team in exchange for the placement of the business's logo on the team's t-shirts, as that would violate the first prohibition within Section 112.313(7)(a). Referenced are CEO 23-4, CEO 23-2, CEO 22-3, CEO 22-1, CEO 17-12, CEO 16-9, CEO 15-2, CEO 14-27, CEO 14-26, CEO 14-21, CEO 13-21, CEO 13-13, CEO 12-23, CEO 12-15, CEO 12-8, CEO 10-15, CEO 10-12, CEO 06-23, CEO 06-9, CEO 04-17, CEO 03-7, CEO 00-21, CEO 94-5, CEO 80-35, CEO 82-13, CEO 74-8.

QUESTION 1:

Would a prohibited conflict of interest be created if you, a School Board member and owner of a private business, either personally volunteered, or had your private business's employees volunteer, on behalf of your business in classrooms and at school-sponsored events within your School District?

Your questions are answered as set forth below.

You are a recently elected School Board Member. You also simultaneously own and operate a private business that provides medical training, courses, and certifications to various age groups. Your business, for example, offers: (1) a hands-only cardiopulmonary resuscitation (CPR) and automated external defibrillator (AED) course to children and adults aged four and older; (2) a youth medical camp for children in grades 6 through 12 that can include babysitting certification, first aid instruction, and injection administration instruction, among other things; and (3) various certification programs for adults aged 18 and older, including a Medical Assisting Certification program and a Phlebotomy Certification program.

You note that prior to becoming a School Board Member, you were, on behalf of your business, very active in volunteering in your District's schools. For example, you would go to high school career fairs and discuss the Phlebotomy and Medical Assisting Certification courses your business offered. You would also lecture in elementary and middle school classrooms on specific pre-assigned topics, such as stress management strategies, self-confidence and self-care education, and the effects of too much sugar in one's diet. Additional volunteer presentations you would give as a representative of your business at schools to students of all ages included hands-only CPR demonstrations, AED usage demonstrations, and phlebotomy demonstrations using fake arms and

fake blood, as well as education on lab tube colors and the correct order of draw during blood collection.

You state that, prior to your School Board campaign, you would wear a company uniform with your business's logo to these volunteer events, and you carried business cards that listed the various programs offered by your business. However, once your campaigning began, you stopped promoting your business during your volunteer activities. You indicate that some schools still occasionally thank your business for its time after you have volunteered by tagging your business in posts on various social media platforms, including Facebook.

With this background, you ask whether your business's continued participation in various volunteering capacities within local schools would create a prohibited conflict of interest. You inquire as to whether you or your employees can volunteer on behalf of your business at school-sponsored career fairs, and whether you or your employees can give entry-level medical career presentations to high schoolers, without violating any ethical prohibitions. You also ask whether you or your employees, on behalf of your business, can volunteer in elementary, middle, and high school classrooms giving informative demonstrations and speeches on various healthcare-related topics without violating any ethical prohibitions. Finally, you ask whether a school's decision to acknowledge and tag your business on a social media platform as a "thank-you" gesture after you or an employee has volunteered in a District school on behalf of your business would create an ethical conflict.

Answering these questions requires analysis primarily under Section 112.313(7)(a), Florida Statutes, which states:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation

of, or is doing business with, an agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

Section 112.313(7)(a) contains two separate prohibitions. The first prohibition forbids you, as a public officer, from having any contractual relationship or employment with a business entity or an agency that is regulated by or is doing business with your own agency. As a School Board Member, your agency is the entirety of your School District. See CEO 23-4 (citing CEO 14-21 and CEO 14-27) ("For school board members, though, we have found their agency to be the entire school district."). Thus, the first prohibition of Section 112.313(7)(a) prohibits you as a School Board Member from having any contractual relationship or employment with your business if your business is either regulated by or doing business with the School District.

A business is "subject to the regulation of" an agency if its operation or modes of doing business are subject to the control or authority of that agency. See CEO 74-8. And a business is "doing business with" an agency if the agency and the business are parties to a lease, contract, or other type of arrangement where one party has a cause of action against the other in the event of a breach or default. See CEO 12-15. Nothing in your facts as you have presented them indicates that your business is either regulated by or doing business with the School District. Thus, it does not appear the first part of Section 112.313(7)(a) prohibits you or your employees from volunteering in District schools on behalf of your private business.

The second part of Section 112.313(7)(a) prohibits you from having any contractual relationship or employment that will create a continuing or frequently recurring conflict of interest between your private interests and the performance of your public duties or that would create an

impediment to the full and faithful discharge of your public duties. The determination of whether a contractual relationship or employment violates the second prohibition in Section 112.313(7)(a) requires an examination of the public officer's duties and a review of his or her private employment or contractual relationship "to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which tempts dishonor." Zerweck v. State Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4th DCA 1982) (internal quotations omitted). The question here is not whether you have the strength of character or public fortitude to withstand the temptation of dishonoring your public duties. See CEO 06-23 n.7. Rather, the second part of Section 112.313(7)(a) is entirely prohibitive in nature; "[t]he existence of temptation for a public officer or employee to forsake the objective performance of his or her public duty in favor of his or her own private interests is sufficient to create a prohibited conflict." CEO 06-9.

"We have found prohibited conflicts of interest to exist under the second clause of Section 112.313(7)(a) when a public officer or employee has employment or a contractual relationship with a business entity and the exercise of their official judgment could affect the business entity." CEO 22-3. A public school teacher, for example, is prohibited by the second part of Section 112.313(7)(a) from offering tutoring services to his or her own students because he or she might "be tempted to compromise his or her public duty performance (for example, by being less vigorous regarding in-school teaching efforts) for the benefit of his or her private interests." CEO 04-17. A teacher might also be tempted to be "less than objective toward a given student regarding grading and other public capacity duties held by the teacher toward a student currently in his or her public school teacher capacity charge, due to the student's participation or lack thereof in the teacher's compensated secondary endeavor." CEO 12-23.

The conflict arises from the teacher's attempts to serve two masters: his or her student, over whom the teacher has public capacity power or duties, and his or her secondary, private business endeavor in which that same student, or his or her parents, participates. See CEO 12-23. See also CEO 04-17 ("A teacher who has a private contractual relationship with the parents of some of his or her students may be tempted to demonstrate favoritism to those students in grading, assignment of roles in school performances and events, and other in-class treatment," or the teacher's responsibility to treat each child impartially might "be impeded by the desire to maintain a harmonious relationship with the child and parents as a private tutor"); CEO 15-2 (a teacher who co-owned a company that marketed monogrammed and embroidered shirts could not sell her shirts to students to whom she was actively teaching or over whom she had responsibilities, nor could she sell shirts to those students' parents, because marketing to students in her classes or their parents could undermine her objectivity towards those students); CEO 13-21 (a prohibited conflict of interest existed where a public school teacher/support facilitator/department chair provided therapy and counseling services to students of his public school in his private capacity); CEO 10-15 (a teacher could not offer a summer art camp for a fee to students in her school classes because there would be the potential for the teacher's responsibility to treat the child impartially to be impeded by her desire to maintain a harmonious and profitable relationship with the child and parents in her private endeavor).

As it pertains to School Board Members specifically, we have held that a prohibited conflict of interest would be created under the second part of Section 112.313(7)(a) if a District School Board Member who owned a private education company offered private tutoring services through her private education company to students within her District. See CEO 14-27 n.3. This was

because a School Board Member might be tempted to act less than objectively towards students in her District depending on whether they partake in her private tutoring services.

Based upon this prior precedent, we note that, by virtue of your being a School Board Member, you have "public capacity power or duties" over each and every child within your School District. See CEO 12-23. You relay, for example, that, as a School Board Member, you will vote on disciplinary matters such as the expulsions of students within your District. Likewise, in your capacity as a School Board Member, you have the ability to raise concerns regarding individual students with District administration, and your concerns will carry great weight.

Additionally, we note that the nature of your business caters predominantly to children, and, more specifically, to children within your School District, as did the nature of the School Board Member's tutoring business in CEO 14-27 and the teacher's businesses in CEO 04-17 (tutoring), CEO 12-23 (coaching and tutoring), CEO 13-21 (therapeutic social skills program for students), and CEO 10-15 (art camp). Your business, for example, offers medical camps and youth training programs for children as young as 11, and hands-only CPR and AED courses to children as young as four. These camps and training programs, like the coaching and tutoring endeavors noted above, involve continued one-on-one contact between yourself/your employees and the students enrolled in those courses. In other words, the unique nature of your business necessarily requires you and your employees to work closely with the individual children who are enrolled in your courses.

We find that, under these specific circumstances – where the nature of your business is geared towards children and fosters relationships between yourself/your employees and the students enrolled in your courses, and where you owe a public capacity duty to each student within your School District – a conflict of interest pursuant to the second part of Section 112.313(7)(a)

would arise if any student within your District signed up for and/or participated in any of your business's courses, camps, or certification programs.¹ This is because if District students enroll in or participate in your private business's programs, you may be posed with a temptation to dishonor your public duties to those students by, for example, voting against their potential expulsions or advocating to school administration about the individualized concerns of those students' parents in an effort to maintain your private business relationships. Your responsibility to treat each child impartially could be affected by the desire to maintain a harmonious and profitable relationship with the children and parents who support your business as clients and customers. See CEO 10-15.

We can conceive of circumstances where a District student or his or her parent could conduct certain transactions with a school board member's private business without implicating the second part of Section 112.313(7)(a). See CEO 10-12 (no prohibited conflict of interest was created pursuant to Section 112.313(7)(a) where a school board member was employed as president of a school uniform company that was designated the "preferred vendor" by many of the district's schools, though the school board member was prohibited from personally soliciting school district personnel and school-related organizations to designate his company as the "preferred vendor"); CEO 80-35 (a prohibited conflict of interest would not be created were an athletic supply company owned by an area assistant superintendent of a school district and a high school principal to sell athletic supplies to students or teachers as private individuals). However, under the specific facts presented here, where your business predominantly serves students within

¹ However, a conflict pursuant to the second part of Section 112.313(7)(a) will not arise if former District students or students from outside of your District register for or participate in your business's course offerings.

your District and where the nature of your business requires you/your employees to work closely with individual students, we determine that the enrollment of a District student in your business's courses would violate the second part of Section 112.313(7)(a).

With the determination that any District student's enrollment or participation in your business's courses will amount to a prohibited ethical conflict pursuant to the second part of Section 112.313(7)(a), we now consider your specific volunteering inquiries. First, you ask whether you or one of your employees, on behalf of your business, may continue volunteering in various capacities in District schools now that you are a School Board Member. Importantly, you relay that the volunteer opportunities do not arise because of your position as a School Board Member; rather, your business, as is true of many other businesses within your community, has historically been invited to participate in these volunteer opportunities.

You also inquire as to whether there are any limitations on, for example, mentioning your company's name, wearing your company's logo, or bringing pamphlets about your company to these volunteer endeavors. Specifically, you wonder, on the occasions where you or one of your employees speaks at a high school career fair or gives a lecture on entry-level medical career presentations, whether you can provide students with your company's name and information on how to register for some of your certification courses. You note that, since your campaign for and subsequent election to the School Board, you no longer wear shirts with your company's logo, carry your business's cards or other marketing materials, or promote your business while volunteering. Further, the supplies you use for in-person demonstration, such as your CPR mannequins, fake phlebotomy arms with fake blood, and various blood tubes (with color-coded tops) are all unbranded; none of this equipment displays your company's name or logo.

Where your volunteering opportunities arise not because of your public position, but rather arise just as they would for other similarly-situated businesses, and where you neither market nor promote your business while volunteering in the District's schools, we find that you would not be tempted to dishonor your public responsibilities simply by volunteering on behalf of your business within your District's schools.² However, we find that marketing your business to students while volunteering would result in a temptation to dishonor your public responsibilities pursuant to the second part of Section 112.313(7)(a).

The purpose of marketing and promoting one's business is to indicate a commercial willingness to sell goods or services, and, as we concluded earlier in this opinion, and consistent with our past opinions, you may not sell to your District's students and parents. Were you to market or promote your business within a District school while volunteering, the *only* audience for that marketing and promotion would be current students—the very people to whom the Code of Ethics prohibits you to sell. Where the Code of Ethics would prohibit you, a School Board Member, from selling goods and services to current students and their parents, we find it also prohibits you (or anyone acting on behalf of you or your business) from communicating a willingness to sell goods and services to current students and their parents through a marketing or promotion effort, because the same temptations to dishonor one's public responsibilities are present in both situations. "A primary objective of the Code of Ethics is that government officials avoid recurring situations in which there is a temptation to place personal gain, economic or otherwise, above the discharge of their fiduciary duty to the public." Zerweck, 409 So. 2d at 60.

² We note that this finding is limited to your specific facts, wherein you note your business has obtained opportunities to volunteer just as other similarly situated businesses within the community have. The facts as you have provided them do not indicate your access to the schools in which you volunteer arises from Section 1001.4205, Florida Statutes, which allows district school board members to, "on any day and at any time at his or her pleasure, visit any district school in his or her school district" without any limitation on "the duration or scope of the visit."

With this information in mind, we conclude that you, or one of your business's employees, may volunteer in various capacities within District schools on behalf of your business, including by volunteering at school-sponsored career fairs, giving entry-level medical career presentations, and participating in various demonstrations for elementary, middle, and high school students. However, you and your business's employees may not, while engaging in such volunteerism, promote or market your business or its numerous course offerings, both because it would violate the second prohibition found in Section 112.313(7)(a), and because, ultimately, the sale of one of your programs to a current School District student would amount to a violation of the second part of Section 112.313(7)(a).

Finally, you wonder whether social media posts made by individual schools that tag your business as a "thank-you" gesture after you or an employee have volunteered constitute a prohibited conflict of interest for you.

Based upon your facts, the schools that have thanked your business previously in social media posts have done so of their own volition. Nothing in your facts indicates you have or would solicit such recognition. Under these circumstances, it does not appear that a school's independent decision to publicly acknowledge your company's volunteering would amount to a prohibited conflict of interest for you. See CEO 14-26 (a member of city council is not prohibited from accepting a chamber of commerce designation of the councilmember's business as an "endorsed vendor" of a particular insurance product as long as such designation is offered absent any understanding or intent that it would influence the councilmember's votes or other official actions).

Your questions are answered accordingly.

QUESTION 2:

Would a prohibited conflict of interest be created were you, a School Board Member, to hire School District employees as employees or independent contractors for your private business?

Your question is answered in the affirmative.

You note that many teachers take on second jobs, particularly during the summer, and some teachers also have relevant skills in allied health education that align with your business's services. You also relay that, as a School Board Member, you might be asked to vote on terminations of teachers if they are recommended by the District Superintendent. You wonder whether you, as a School Board Member, can hire School District employees as employees or independent contractors for your private business without violating any ethical provisions.

To answer this question, analysis under Section 112.313(7)(a) is necessary. The first prohibition of Section 112.313(7)(a) is not applicable to this situation, as your private company hiring School District employees would not place your company in a contractual relationship with your agency, which is the District, nor would it indicate that your company is otherwise doing business with the District.

The second part of the statute prohibits a public officer from having any employment or contractual relationship that will create a continuing or frequently recurring conflict between her private interests and the performance of her public duties, or that will impede the full and faithful discharge of her public duties. The inquiry under the second prohibition of Section 112.313(7)(a) is whether your company's hiring of teachers or employees from within the District could affect your public duties School Board Member.

We previously considered an analogous situation in CEO 14-27. There, a School Board Member owned a tutoring company and asked whether her company could hire District teachers to provide private tutoring services to District students. We determined that the School Board

Member's hiring of teachers within her District to work for her private tutoring company would violate the second prohibition found in Section 112.313(7)(a), reasoning that "[n]otwithstanding that you represent that your role as a School Board member does not require you to review how District teachers are performing, it is inescapable that the School Board, of which you are a member, has authority or responsibility regarding District teachers." CEO 14-27. Further, we noted that, should the School Board Member be asked to provide a disciplinary recommendation against a teacher involved in her company's tutoring program, "questions could be raised regarding [the School Board Member's] objectivity." CEO 14-27.

Likewise, we have also held in the past that a member of a school board who worked at a literacy foundation was prohibited by the second part of Section 112.313(7)(a) from engaging in teacher recruitment within the District where she was a Board Member because "she could be tempted to act less than objectively toward teachers in her District depending on whether or not they worked for the Foundation." See CEO 14-21.

In line with our prior decisions, we find that, regardless of whether you were to hire District teachers or other employees to work for your business as employees or as independent contractors, such hiring would violate the second part of Section 112.313(7)(a) because it could undermine your objectivity regarding your official duties concerning District employees.

You note in your inquiry that you would be willing to recuse yourself from any votes regarding any matters before your School Board which might involve District teachers who are also employees of your private business. We find it important to clarify that recusal from a vote does not negate a prohibited conflict of interest under Section 112.313(7)(a). See CEO 16-9 n.4. See also CEO 03-7, CEO 94-5 and CEO 23-2 n.10 (citing In re Milton West, Complaint No. 16-032, Final Order No. 17-057, *aff'd* by sub nom. Milton West v. Comm. on Ethics, 5D17-2076 (Fla.

5th DCA 2018)). This is because the voting conflict law, found in Section 112.3143, operates distinctly from Section 112.313(7)(a). CEO 94-5. Thus, recusing yourself from a vote involving a District employee who you also hired to work for your private business would not negate the prohibited conflict of interest under the second part of Section 112.313(7)(a).

For these reasons, the second part of Section 112.313(7)(a) would prohibit you from hiring a District teacher or employee to work for your private business because the private contractual relationship between your business and that employee could undermine your objectivity as a School Board Member and, ultimately, could tempt you to dishonor your public duties.

Your question is answered accordingly.

QUESTION 3:

Would your private business's sponsorship of a team in one of the District's schools violate the Code of Ethics for Public Officers and Employees?

Your question is answered in the affirmative.

You note that, prior to your election as a School Board Member, your business sponsored certain school events. As an example, you indicate that your business recently had an opportunity to sponsor the Future Problem Solver's team at one of your District's schools, and state that, in return for your sponsorship, your business's name and logo would have been placed on the team's shirts. You inquire as to whether your business can continue to sponsor District teams in this manner, and receive similar recognition, now that you are a School Board Member.

Again, the answer to this question requires an analysis under Section 112.313(7)(a). With regard to the prohibition in the first part of Section 112.313(7)(a), an entity is "doing business" with an agency "if they have entered into a lease, contract, or other type of arrangement where one

party would have a cause of action against the other in the event of a breach or default." CEO 22-1. We have not opined directly on this issue of whether sponsoring a school's team amounts to "doing business" with that school or school district. However, we have considered similar factual circumstances and, ultimately, have determined that donating to an agency does not amount to "doing business" with an agency because "'doing business' contemplates an exchange of consideration, such as money, property, or services." CEO 82-13.

Here, the facts as you present them indicate that your business's sponsorship of a team would consist of a one-time payment of money to the school in order to support a specific endeavor. Essentially, if your sponsorship were a donation, we would not view that as "doing business" with an agency. See CEO 17-12.

However, you further note that, in exchange for your business's sponsorship of a team, your business's logo might then be placed on the team's shirt. The question then becomes whether the school placing your business's logo on the team's t-shirts would amount to consideration for your sponsorship of the team, and ultimately indicate your business and the school would be "doing business" with one another.

In the past, we have found that, though making a donation to an agency, standing alone, does not amount to "doing business" with that agency, making a donation to an agency with the understanding that the agency has a mutual obligation in response would likely amount to "doing business." In CEO 13-13, a member of the Sarasota Manatee Airport Authority personally contracted to purchase some property about a half-mile from the end of one of the airport's runways and paid a deposit. The Board Member wanted to donate the purchase rights under the contract to the Airport Authority if the Airport Authority agreed to pay off the Board Member's deposit so the entirety of the deposit could be returned to the Board Member. We opined that, "in a strict sense

it might be said that the Commissioner would hold a contractual relationship with a business entity (his company or his proprietorship) doing business with the Airport Authority (his public agency) by virtue of the mutual obligations of the donation." CEO 13-13.

Under your particular factual circumstances, we determine that the addition of your business's logo to the t-shirts of a school's team would constitute consideration in exchange for your business's sponsorship. And such consideration would amount to your business "doing business" with the school. Thus, such a sponsorship would violate the first prohibition of Section 112.313(7)(a).

Your question is answered accordingly.

QUESTION 4:

Can you, as a newly elected School Board Member, use the platform PeachJar to e-mail flyers to parents regarding your private business's programs or events without violating ethical prohibitions?

Your question is answered as set forth below.

You state that, before your election as a School Board Member, your business had an account with the online platform PeachJar. Through your PeachJar account, you were able to pick school districts that participated in PeachJar and pay per school to submit your business's flyers for approval and dissemination to parents. Each individual school would then approve or deny the flyers and, if approved, would e-mail the flyers through PeachJar to the school's families. You note that School Board Members do not participate in the approval process for the flyers submitted via PeachJar. You wonder whether you may continue to market your business through PeachJar to

students within your District and to students in other school districts now that you are a School Board Member.

Regarding your business's use of PeachJar to market to students within your District, in Question 1, *supra*, we found that a marketing effort on behalf of your business directed solely at current students of your District and their parents would violate the second part of Section 112.313(7)(a). We noted that the registration of any District students in any of your business's courses would violate the second part of Section 112.313(7)(a) because, where your company sells primarily to students, and where you, as a School Board Member, have public capacity power over each student within your District, the business relationship between yourself and a District student might create the temptation for you to dishonor your public duties to those students. And were you to market your business to District students, the very people to whom the Code of Ethics prohibits you to sell, the same temptations to dishonor one's public responsibilities would arise.

Likewise, a marketing effort through the PeachJar platform, if directed to current students of your District, would create a prohibited conflict of interest between your public responsibilities and your private interests.

However, you note that the platform PeachJar allows you to pick the districts to which you wish to market your flyers. The promotion of your business's classes to districts other than your School District would not implicate the second part of Section 112.313(7)(a), as you do not owe a public duty to students outside of your District. Thus, you may utilize the platform PeachJar to market your business in other school districts without violating the second part of Section 112.313(7)(a).

Your question is answered accordingly.