

# *Florida House of Representatives*

*Marco Rubio, Speaker*  
Office of the General Counsel

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General Counsel

## **FORMAL OPINION 07-02**

To: Representative Kelly Skidmore, District 90

Prepared By: Jeremiah Hawkes, General Counsel

Date: April 17, 2007

Re: Voting Conflicts

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You asked whether it presents a voting conflict for you to vote upon House Bill 875, relating to public employee charitable campaigns.

Your question is answered in the negative.

House Bill 875, if enacted, would create the Florida Public Employees' Charitable campaign. This program would allow for voluntary payroll deduction from public employees salaries for certain charitable organizations. You are the Regional Director of the Arthritis Foundation, a charitable organization that would qualify for the payroll deductions under the terms of the bill.

Generally House Rules provide that "every member shall have an obligation to vote on all matters that come before the House in session or before any council or committee to which the member is appointed." House Rule 3.2. The only exception is that a member must abstain from voting "on any measure that the member knows or believes would inure to the member's special private gain." House Rule 3.2(a) You have indicated that your compensation is set at a fixed amount and is not tied to the amount of donations that the group receives. Therefore, if this bill passed and it resulted in the organization receiving more funds, you still would be compensated at the same amount and, thus, the legislation would not work to your gain.

You also inquired about whether any of the disclosure requirements in Chapter 112 or in Rule 3.2(b) would apply.

This question is also answered in the negative.

Subsection 112.3143(2) Florida Statutes provides:

No state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, 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.

This subsection incorporates and adds to the disclosure requirement found in Rule 3.2(b). Previous House Opinions and Commission on Ethics Opinions (CEO) have interpreted this requirement the same. (see e.g., House Opinion 05-01). Because the Foundation is a principal by whom you are retained in your capacity as a regional director, the question becomes whether the bill works to the special gain or loss of the Foundation. There are two factors that are used to determine whether a special gain or loss will result. (see House Opinion 05-01, CEO 01-8, 01-18).

The first factor is whether the gain would be remote or speculative. In this instance there is no guarantee that the Foundation would receive any gain from the passage of the bill. It may be that no one or only people who would otherwise donate to the Foundation would give any money through this program. Thus, any potential gain to the program is speculative and you would not have to formally disclose your interest.

The second factor is the size of the class affected by the legislation. You have indicated that there are at least 50 organizations that could benefit from the legislation. The larger the class, the more likely any gain is to be found of a general nature rather than a "special" gain. If I were to advise based on this factor alone, I would say that this situation falls into a gray area and you should disclose. This factor is evaluated on a case by case basis and since your bill limits the class from what could be a much larger group, such as all charitable organizations, the class size is not necessarily large enough to avoid worrying about disclosure. However when this factor is considered in conjunction with the speculative nature of any benefit to be received by the Foundation, no disclosure is necessary.

*This opinion is prepared in accordance with House Rule 15.8. Pursuant to that rule this opinion could be subject to revision.*

cc: Office of the Speaker  
Rules & Calendar Council  
Committee on Ethics & Elections  
Commission on Ethics  
Steven Kahn, Senate Counsel  
Office of the Clerk  
Majority Office  
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