



Florida House of Representatives

Marco Rubio, Speaker
Office of the General Counsel

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FORMAL OPINION 08-03

To: Representative Marty Bowen, District 65

Prepared by: Jeremiah Hawkes, General Counsel
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Re: Voting Conflict Related to CSX Project

You have inquired whether co-owning a piece of property near a future intermodal site for CSX Railroad could create a voting conflict for you in relation to the General Appropriations Act.

The answer is no.

The facts you relate are as follows. You and your brother own a piece of land in Winter Haven, Florida that is near a portion of the proposed intermodal site for CSX Railroad. Currently, the property is under contract by a local developer and this contract has been in place for a number of years.

This intermodal site is part of a plan wherein the Florida Department of Transportation (DOT) would purchase sixty-one miles of track from CSX to allow the State to operate a commuter rail line (CSX-CRT). In the General Appropriations Act (GAA) which you would vote on as a member of the Policy and Budget Council and during session when the Act is taken up by the whole House, there is a possibility that the CSX -CRT project would be included in the budget for the DOT.

Funding for the CSX-CRT project is currently included in specific line items (work program/fixed capital outlay categories) in the GAA for 2007-08. The tentative work program for 2008-09 through 2012-2013 was submitted to the Legislature for review and approval by means of the upcoming 2008-09 GAA. The GAA will not specifically identify the project, but rather the funding for the project is included in the categories by lump sum.

Formal Opinion 08-03
March 13, 2008
Page Two

For example, in the 2007-08 GAA, specific line item 2220, is the category from which interstate construction projects are funded. Although thousands of project phases make this number up, there are no specific projects identified. However, any changes to the projects approved by means of the GAA, must go through an amendment process and be approved by the Governor after allowing the EOG and the Legislature a 14-day consultation period for review. See section 339.135(4)a, Florida Statutes. As of this writing, no budget language for DOT or the CSX-CRT project has been filed.

House Rule 3.2 provides that “except when abstention is required, 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(a) addresses abstention on matters of special private gain. The rule provides, “A member may not vote on any measure that the member knows, or believes would inure to the member’s private gain.” This is the only situation in which a member can decline to vote under the rules.

What constitutes “special private gain” depends on the size of the class of persons affected. House Opinions and the Commission on Ethics have followed the same line of reasoning for almost 30 years. In a 1980 Commission on Ethics opinion, the Commission stated:

We have advised that whether a particular measure inures to the special private gain of an officer or his principal will turn in part on the size of the class of persons which stands to benefit from the measure. When the class of persons is large, special gain will result only if there circumstances unique to the officer or principal under which he stands to gain more than other members of the class. On the other hand, when the class of persons is extremely small, the possibility of special gain is much more likely. Commission on Ethics Opinion (CEO) 80-61.

The House has followed this reasoning on numerous occasions. See e.g. HCO 04-02. In the context of the General Appropriations Act the project will represent less than one percent of the total budget. When looking at the number of people impacted by the GAA in comparison to this project it cannot be said there is any special gain. See e.g. HCO 05-01, CEO 88-20. Even were there to be an amendment or bill that dealt with this project in particular, the number of people who could potentially realize an economic benefit from this project is quite large considering the project would be to develop a commuter rail system in central Florida that could bring new business and new jobs. Even if you limited to landowners the number of landowners in and around the sixty-one miles of track would be quite large. So, I would opine that any gain you could realize is not special.

Even if we were to assume that you were part of some select group, there is another factor that

Formal Opinion 08-03
March 13, 2008
Page Three

must be considered when looking at whether something would be considered a special gain or loss. That is whether the gain “would be remote and speculative.” See e.g. CEO 01-18, HCO 05-01. You have stated that the land in question is under contract to be sold for a fixed price. Thus, you are unlikely to see any benefit from the CSX-CRT project. However, even if we assume the contract is going to fall through, there is no guarantee that you would see any benefit in the near future. It is just as possible that the project will not result in any increased value for your land or that having more trains going nearby will decrease the value of your land. The rule speaks to more definite and immediate benefit than the sort your question supposes.

There are disclosure requirements found in House Rule 3.2(b) and section 112.3143, Florida Statutes. They deal with a special gain or loss in relation to family members and business associates. The same analysis would apply to them.

In conclusion, there would not be any voting conflict requiring abstention or disclosure in regard to the CSX-CRT project and your ownership of land nearby.

JMH/JA/ch

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