

Florida Ethics Law

For Public Officers and Employees

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The Office You Hold Is A Public Trust



Henry Clay

Government is a trust, and the officers of the government are trustees. And both the trust and the trustees are created for the benefit of the people.

AZ QUOTES

Constitution or Form of
Government for the
People of Florida.

We, the people of the State of Florida
by our delegates in Convention assembled, in
the city of Tallahassee, on the 25th day of October,
in the year of our Lord 1865, and of the Indepen-
dence of the United States, the 90th year, in order
to secure to ourselves and our posterity the en-
joyment of all the rights of life, liberty and prop-
erty, and the pursuit of happiness, do mutually
agree each with the other, to form the following con-
stitution and form of government in and for the
said State.

Article I.
Declaration of Rights.

*That the great and essential principles of liberty and free
government may be recognized and established, we*
do hereby

Florida Constitution Article II, Section 8 (1976)

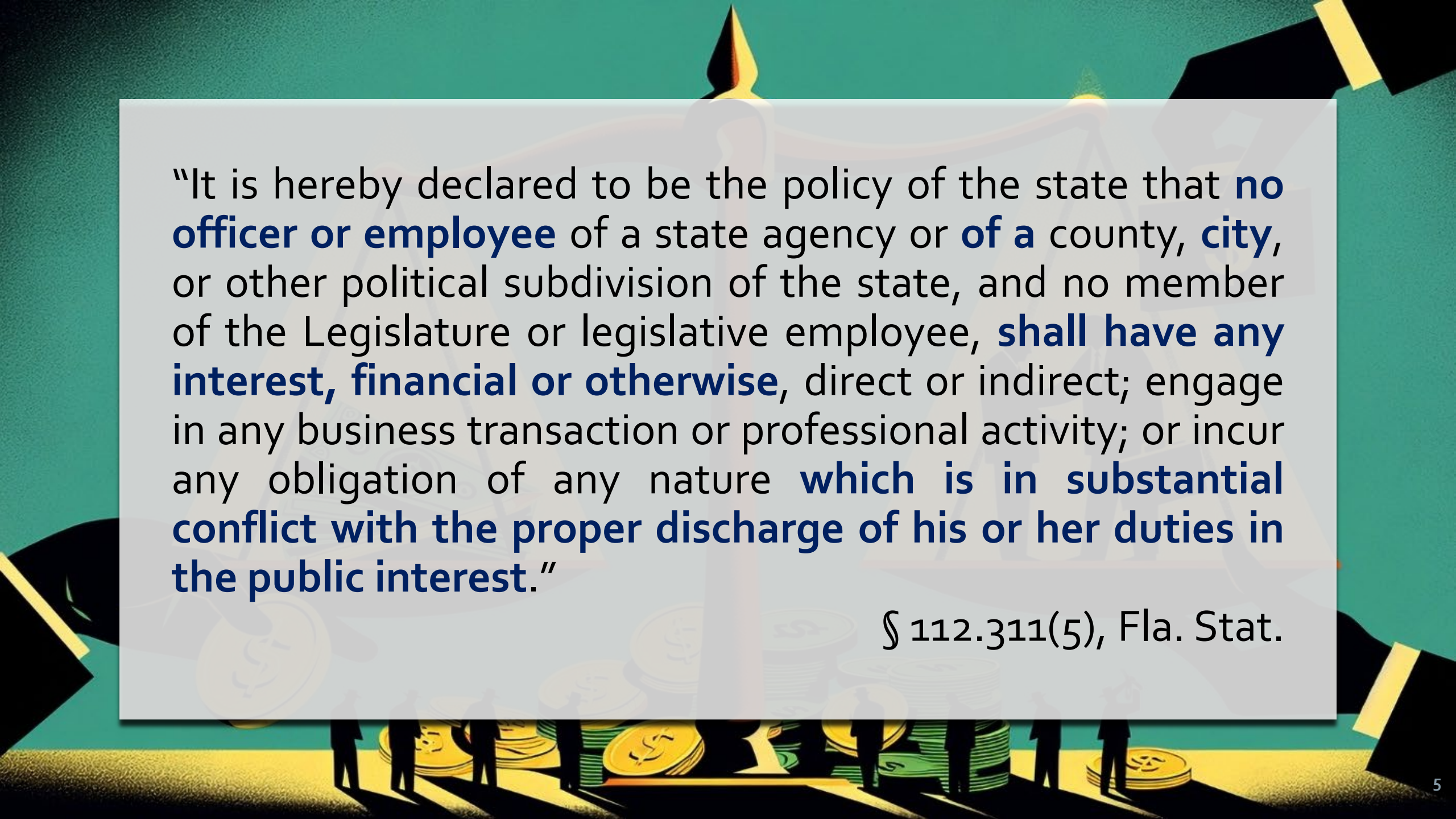
“A public office is a public trust.
The people shall have the right to
secure and sustain that trust
against abuse.”

"The very essence of a free government consists in considering offices as public trusts, bestowed for the good of the country, and not for the benefit of an individual or a party."

~ John C. Calhoun

"It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions **for the benefit of the public** ... promoting the public interest and maintaining the **respect of the people in their government must be of foremost concern.**"

§ 112.311(6), Fla. Stat.



“It is hereby declared to be the policy of the state that **no officer or employee** of a state agency or **of a county, city,** or other political subdivision of the state, and no member of the Legislature or legislative employee, **shall have any interest, financial or otherwise,** direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature **which is in substantial conflict with the proper discharge of his or her duties in the public interest.**”

§ 112.311(5), Fla. Stat.

CONFLICTS OF INTEREST

“...a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.”

§ 112.312(8), Fla. Stat.

ETHICS BODIES



Florida Commission on Ethics

"A Public Office is a Public Trust"

Composition

Nine (9) Members

- Five (5) appointed by Governor

- Two (2) appointed by Senate President

- Two (2) appointed by Speaker of the House

Authority

Issue advisory opinions

Investigate ethics complaints and referrals

- Generally, five (5) year statute of limitations

- Anyone with personal knowledge

- Referrals from statutorily designated agencies

 - Governor, FDLE, State Attorney, U.S. Attorney, Local Ethics Boards

- Cannot be initiated by Commission

Opinions published at: <http://www.ethics.state.fl.us>

WHERE DO THE RULES COME FROM?



- U.S. Constitution
- Florida Constitution
- Federal Law: Honest Services Fraud
- Statutory Law: Florida Statute Chapter 112, Part III
"Code of Ethics for Public Officers and Employees"
- Common Law: Laws created by court decisions
- Criminal Statutes: Bribery, Misuse of Public Office,
Misuse of Confidential Information, Etc.
- City Charter
- Local Code of Ethics

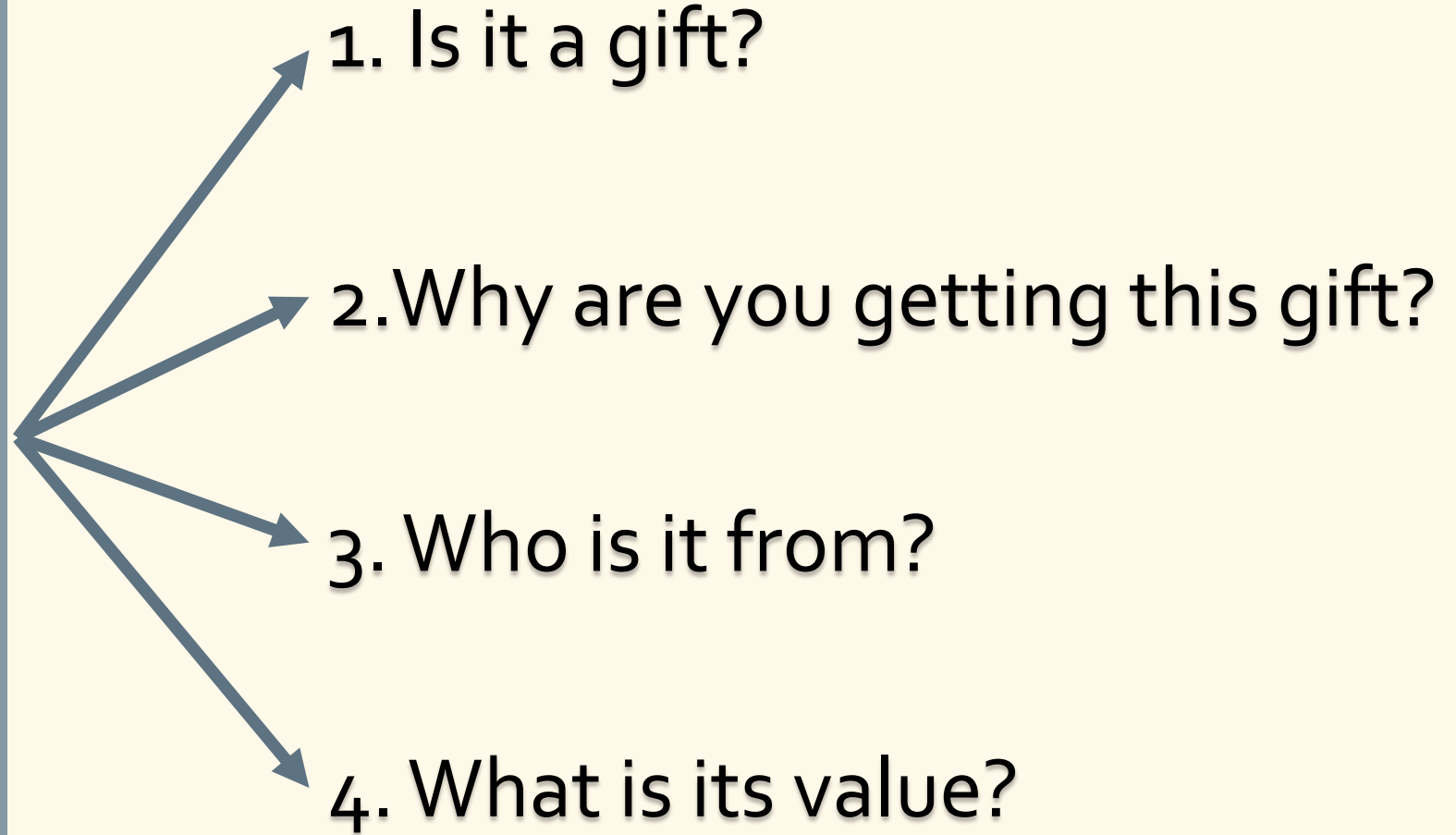


Questions?

GIFTS



FLORIDA GIFT LAW: Four Key Questions

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graph LR; A[FLORIDA GIFT LAW:
Four Key
Questions] --> B[1. Is it a gift?]; A --> C[2. Why are you getting this gift?]; A --> D[3. Who is it from?]; A --> E[4. What is its value?];
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1. Is it a gift?
  2. Why are you getting this gift?
  3. Who is it from?
  4. What is its value?

## FLORIDA GIFT LAW: (1) Is it a gift?

# What is a “gift”?

**‘Gift,’ for purposes of ethics** in government and financial disclosure required by law, means that which is **accepted by a donee** or by another on the donee’s behalf, or that which is paid or given to another for **or on behalf of a donee**, directly, indirectly, or in trust for the donee’s benefit or by any other means, **for which equal or greater consideration is not given within 90 days...**

§ 112.312(12)(a), Fla. Stat.

# “GIFTS” INCLUDE, BUT ARE NOT LIMITED TO:

- Real property.
- The use of real property.
- Tangible or intangible personal property.
- The use of tangible or intangible personal property.
- A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin.
- Forgiveness of an indebtedness.
- Transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking.
- Food or beverage.
- Membership dues.
- Entrance fees, admission fees, or tickets to events, performances, or facilities.
- Plants, flowers, or floral arrangements.
- Services provided by persons pursuant to a professional license or certificate.
- Other personal services for which a fee is normally charged by the person providing the services.
- Any other similar service or thing having an attributable value not already provided for in this section.

**§ 112.312(12)(a)**  
**Fla. Stat.**

# NOT EVERYTHING IS A GIFT (JUST MOST THINGS)

## 'Gift' does not include:

- Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization.
- Except as provided in s. 112.31485, contributions or expenditures reported pursuant to chapter 106, contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party or affiliated party committee.
- An honorarium or an expense related to an honorarium event paid to a person or the person's spouse.
- An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.
- An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.
- The use of a public facility or public property, made available by a governmental agency, for a public purpose.
- Transportation provided to a public officer or employee by an agency in relation to officially approved governmental business.
- Gifts provided directly or indirectly by a state, regional, or national organization which promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization or officials or staff of a governmental agency that is a member of that organization.

**§ 112.312(12)(b)  
Fla. Stat.**

## INDIRECT GIFT

### Rule 34-13.310

...where the gift or the benefit of the gift ultimately is received by the reporting individual... and where the gift is provided with the intent to benefit the reporting individual...

## UNAUTHORIZED COMPENSATION: Pay, gifts, or...

No **public officer**, employee of an agency, or local government attorney or **his or her spouse or minor child shall**, at any time, **accept any compensation, payment, or thing of value** when such public officer, employee, or local government attorney **knows**, or, with the exercise of reasonable care, **should know**, that **it was given to influence a vote or other action** in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

§ 112.313(4), Fla. Stat.

## **Business Associate:**

- Any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.

§ 112.312(4), Fla. Stat.

## **Principal:**

- Someone who authorizes another to act in his or her place

<https://www.law.cornell.edu/wex/principal>

## **Relative:**

- Father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law

**WHO BENEFITS?  
WHO IS HARMED?**

## FLORIDA GIFT LAW:

(2) Why are you getting this gift?

**No public officer**, employee of an agency, local government attorney, or candidate for nomination or election **shall solicit or accept anything of value** to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, **based upon any understanding that the vote, official action, or judgment** of the public officer, employee, local government attorney, or candidate **would be influenced thereby**.

§ 112.313(2), Fla. Stat.

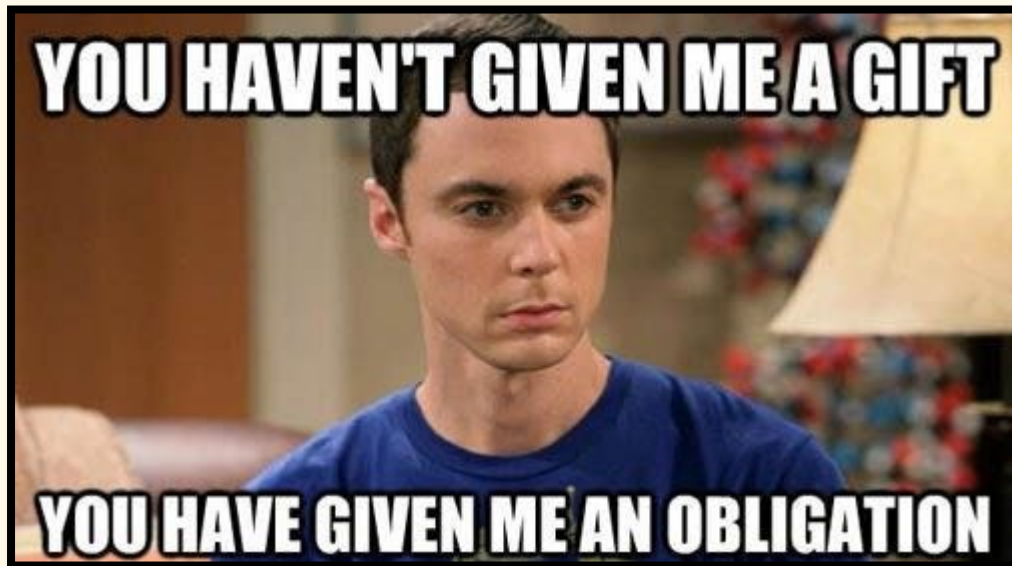
## FLORIDA GIFT LAW: (3) Who is it from?

- Gifts from political committees are prohibited
- Gifts from vendors, lobbyists, and principals of lobbyists are restricted (no more than \$100 in value)
- Gifts from relatives are exempt from the law's restrictions and reporting requirements

## FLORIDA GIFT LAW: (4) What is its value?

### Reporting Requirements:

- Gifts over **\$100**, other than those from relatives, **must be reported**
- Gifts over \$25 from vendors, lobbyists, or principals of lobbyists must be reported quarterly
- REMEMBER: gifts over \$100 from vendors, lobbyists, or principals of lobbyists are prohibited



# SOLICITATION OF GIFTS:

## *The Takeaway? Don't*

### Exception:

- Solicitation of gifts that **will not benefit** the **elected official**, their immediate family, any other individual required to report gifts, or any employee involved in procurement
- Example: soliciting donations for a **charitable cause** that in no way benefits any of the above individuals



Curing An Improper Gift:  
Pay the full value of the gift to the  
gift giver within 90 days of receipt

# PERCEPTION MATTERS

Even if a particular gift is **legal**, consider carefully the **public perception** of accepting that gift



Questions?

# MISUSE OF PUBLIC POSITION



**No public officer**, employee of an agency, or local government attorney **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.**

§ 112.313(6), Fla. Stat.

A broad restriction and  
typically the most investigated  
and referenced

# ABUSE OF PUBLIC POSITION



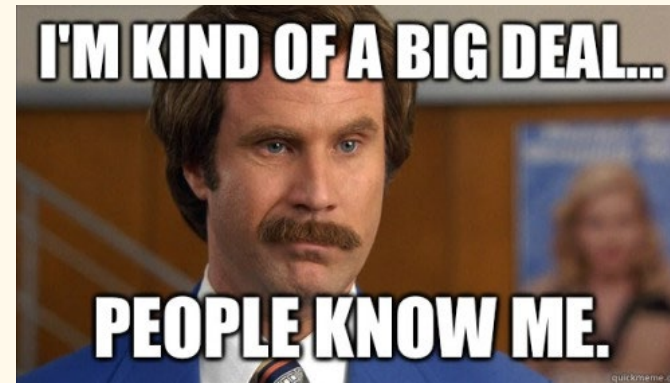
A public officer or public employee **shall not abuse his or her public position in order to obtain a disproportionate benefit** for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.

Florida Constitution, Article II, Section 8(h)(2)

Disproportionate benefit: a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.

Rule 34-18.001(2)(a), Florida Administrative Code

## OPPORTUNITIES MISUSE/ABUSE



- Traffic stops
- Use of city seal, email account, resources
- Free storage of resources
- Use of city equipment (office supplies, equipment, facilities)
- Requiring employees to perform work for your family or private business
- Allocating public resources to people in your sphere of influence



Questions?

# CONFLICTS RELATED TO EMPLOYMENT



## DOING BUSINESS WITH ONE'S AGENCY

- A public employee or public officer, acting in their public capacity, cannot “directly or indirectly purchase, rent, or lease any realty, goods, or services from his or her own agency” from their business or that of their spouse or child
- A public employee or public officer, acting in their private capacity, cannot “rent, lease or sell any realty, goods, or services” to their agency.

§ 112.313(3), Fla. Stat.

## 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,** excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state.”

§ 112.313(7)(a), Fla. Stat.

## GENERAL EXEMPTIONS

- Rotation system
- Competitive bidding (must meet certain criteria and filings)
- Legal advertising, utilities services, passage on common carrier
- Emergency purchase or contract
- Sole source within city after disclosure
- Not exceeding \$500/calendar year
- Banks...without favor
- Private purchase at terms available to public

§ 112.313(12), Fla. Stat.

Advisory board members may hold conflicting employment and serve if, after full disclosure, the conflict is waived by 2/3 vote of the appointing body

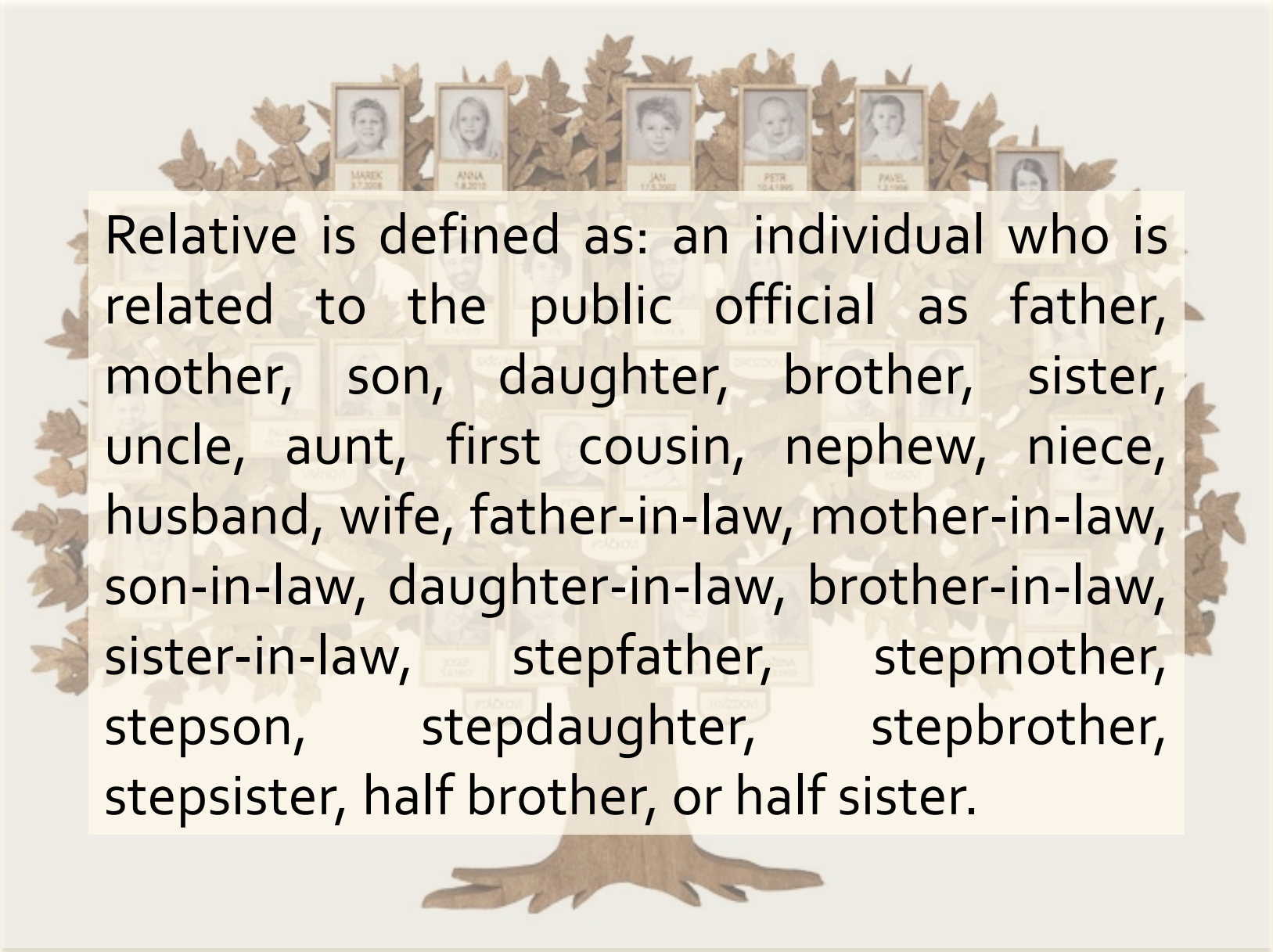
## RESTRICTION ON EMPLOYMENT OF RELATIVES

**A public official may not appoint, employ, promote, or advance, or advocate for** appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control **any individual who is a relative of the public official.**

**An individual may not be appointed, employed, promoted, or advanced in or to a position** in an agency **if such appointment, employment, promotion, or advancement has been advocated by a public official,** serving in or exercising jurisdiction or control over the agency, **who is a relative of the individual** or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member.”

§ 112.3135 (2)(a), Fla. Stat.

## RESTRICTION ON EMPLOYMENT OF RELATIVES



Relative is defined as: an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

## RESTRICTION ON EMPLOYMENT OF RELATIVES

This does not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population.

Mere approval of budgets shall not be sufficient to constitute “jurisdiction or control” for the purposes of this prohibition.

Limitation is on public official and the employee

DOES NOT: prohibit two relatives from being employed in the same agency, or supervising and assigning work to a relative



Questions?



Questions?

# DISCLOSURE OR USE OF INFORMATION



## DISCLOSURE OR USE OF INFORMATION



**A current or former public officer**, employee of an agency, or local government attorney **may not disclose or use information not available to members of the general public and gained by reason of his or her official position**, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

§ 112.313 (8), Fla. Stat.

# Navigating Potential Conflicts

- **READ THE AGENDA**
- Discuss it in private with the City Attorney
- If the attorney determines no voting conflict exists (in law):
  - Request the attorney put that determination in writing or put their finding on the record at the time of the public meeting
- Announce, Abstain, File Form With the Clerk
- Consider taking a break?

# CLOSING THOUGHTS

## Ask Yourself...

- Am I acting in the interest of the public, which has entrusted me with the duties of this office?
- Is the situation one in which an observer might think that I am tempted to do something that is dishonorable?
- Is there a potential conflict between two competing demands on my allegiance?
- What will this look like as a headline, and am I comfortable with that headline?

Then..  
Ask Your City  
Attorney!



**KEEP  
CALM  
-  
IT  
DEPENDS**