



## Memo

To: OCCRC Members

From: Cliff Shepard

CC: Katie Smith

Re: Lobbyist restrictions

Members-

Currently, Commissioners and other County officials are primarily governed by the same lobbying regulations that apply to other state and local officials. However, County officials can be treated differently when lobbying the County government while in office or immediately following departure. These restrictions apply differently based on the type of County official.

Restrictions greatly increasing restrictions on certain elected County officials will soon take effect. Starting in 2022, elected County officials will be prohibited from (1) lobbying virtually any governmental body while in office or (2) lobbying their former County for a period of 6 years following departure.

### Legal Background and Definition of Lobbyist & Lobbying

How Florida law regulates lobbying depends, not just an individual's activities, but also the governmental body being lobbied. This means different restrictions apply when an individual is lobbying the legislature, the executive branch, a special district or a local government.

A "lobbyist" is generally one who attempts to influence a governmental agency or official on behalf of another person in exchange for compensation. See F.S. §§ 11.045(1)(h), 112.3215(1)(h), 112.3261(1)(c); and Orange Cnty. Code § 2-351(h). While the regulatory schemes differ on the definition of "lobbying," each scheme shares the same basic idea: seeking to influence a governmental body with respect to a

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decision of the body or attempting to obtain the goodwill of a governmental body official or employee. See F.S. §§ 11.045(1)(e) (lobbying the legislature), 112.3215(1)(f) (lobbying the executive branch or Constitution Revision Commission), 112.3261(1)(b) (lobbying a water management district); and Orange Cnty. Code § 2-351(i) (lobbying Orange County).

Orange County's code, which governs lobbying the County government, provides the following definitions:

- *Lobbyist* means any person, partnership, corporation or other business entity that receives compensation to lobby on behalf of a principal, or an employee of a principal only when governmental relations, acting as a governmental liaison, or communicating with governmental agencies is a primary or substantial part of the employee's ongoing job responsibilities. Lobbyist does not mean a county official, county employee or any other person affiliated with the county while acting in his or her official capacity.
- *Lobbying* means:
  - To communicate or the act of communicating directly with the county mayor, with any other member of the board, or with any member of a procurement committee; or
  - To communicate indirectly with the county mayor or any other member of the board by communicating with any staff member to a county commissioner, any county employee assigned to the county mayor's staff, the county administrator, any deputy or assistant county administrator, the county attorney, any county department director, or any county division manager.

Orange Cnty. Code § 2-351(h). The code also (1) prohibits lobbying in procurement matters; (2) prohibits certain campaign contributions; (3) requires lobbyists to register with the County; and (4) requires lobbyists to submit annual expenditure reports. See Orange Cnty. Code Ch. 2, Art. X, Sec. 2-354. There are no laws preventing a registered lobbyist from running for or holding office in Orange County.

General corruption criminal statutes also regulate lobbying activities. Bribery is a second-degree felony under Florida law, and is defined as:

“[T]o knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person

believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.”

Federal law prohibits similar actions through its Honest Services Fraud statute. *See* 18 U.S.C. § 1343-1349 (prohibiting bribes and kickbacks in exchange for official acts).

### Lobbying Restrictions While In Office

While there is no direct statute prohibiting a County officer from lobbying the County while in office, the Florida Commission on Ethics has repeatedly opined that such activities violate Florida’s statutory prohibition against public officers entering contractual relationships in conflict with their public duties. *See* F.S. § 112.313(7)(a); Comm. on Ethics Op. 09-10 (June 17, 2009). This applies to appointed officers on advisory boards as well as Commissioners. *See* F.S. § 112.313(1). Otherwise, County officers may lobby other governmental bodies so long as there is no conflict.

Amendment 12, which passed in 2018, will soon restrict practically all lobbying activities by elected County officers. Starting on December 31, 2022, no public officer may lobby on issues of policy, appropriation or procurement before virtually any government body while in office. *See* FLA. CONST. Art. II, Sec. 8 (2022). The term “public officer” is defined to include county commissioners as well as county constitutional and charter officers. *See* FLA. CONST. Art. II, Sec. 8(f)(1) (2022).

Additionally, current state ethics laws prohibit elected county officers and certain appointed County officials<sup>1</sup> from soliciting any gift from a lobbyist who has lobbied their County in the past 12 months or from *accepting* a gift worth more than \$100 from a lobbyist. *See* F.S. § 112.3148.

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<sup>1</sup> All elected officers are subject to this provision, but only appointed officers who must file a Form 1 or Form 6 disclosure with the state are subject to this rule. You can read more regarding who must file a such disclosures at F.S. § 112.3145(1)(a).

Cooling-Off Period: Lobbying the County after Departing County Office

Former County officers currently face no special restrictions on lobbying except when it comes to lobbying their former County. Section 112.313(14), *Florida Statutes*, provides a two-year cooling off period for elected officials lobbying their former agency as follows:

A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. . . . The “government body or agency” of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

While this section only applies to *elected* local government officers, Section 112.313(13) authorizes local governments to pass their own laws applying the same restrictions to appointed officers and employees. Orange County does not appear to have passed such an ordinance.

Amendment 12 will significantly lengthen this cooling-off period. Effective December 31, 2022, the Florida Constitution will prohibit County Commissioners, Charter Officers and Constitutional Officers from lobbying their governing body or agency on the issues of procurement, policy or appropriation for a period of six years. See FLA. CONST. Art. II, Sec. 8(f)(3)(c) (2022). While this section does not affect appointed officers or County employees, the Amendment explicitly authorizes enabling legislation. That legislation may include an expanded definition of “public officers.”