May 18, 2006

Assistant Chief Louis A. Vega
Criminal Investigations Division
City of Miami Police
P.O. Box 016777
Miami, FL 33101

RE: INQ 06-67
Hiring Your Daughter for a Position
with the City of Miami Police Department

Dear Assistant Chief Vega:

Robert Meyers asked me to respond to your letter of May 8, 2006, in which you requested a County Commission on Ethics opinion regarding the City of Miami hiring your daughter as a victim-advocate—a position created and partially funded through a federal grant to the City of Miami.

Our analysis follows in four parts:

FIRST, nepotism is not prohibited *per se* under the County Ethics Ordinance. Precedent on this issue exists at County Ethics Opinion RQO 01-78, in which Miami-Dade County Commissioner Rebecca Sosa was allowed to hire her cousin's husband for a position on her staff.

You are bound, however, by Section 2-11.1 (g) of the Ethics Code, *Exploitation of official position prohibited*, which prohibits you from securing "special privileges or exemptions for yourself or others" as Assistant Police Chief. Although you say in your letter that you will not be supervising the newly hired victim-advocate, you do not indicate who in the Police Department will hire the victim-advocate. As Assistant Chief, you are advised that you must avoid any affirmative action to hire, promote, or advocate for the advancement of your daughter. Precedent on this issue exists at

County Ethics Opinion RQO 99-24, in which the Risk Management Division was allowed to hire the nephew of a current employee because the current employee had no input in the selection process.

Additionally, the legislative intent of the County Ethics Ordinance is to ensure integrity and restore public confidence in government. (*See* the Miami-Dade County Code at § 2-1067.) With these guidelines in mind, you should avoid any actions that would appear to impede the recruitment, hiring, or promotion of individuals best qualified to serve in the position of victim-advocate, apart from their relationship to you.

SECOND, we suggest you seek an opinion from the State Ethics Commission, which has jurisdiction to interpret the State anti-nepotism statute. Specifically, the anti-nepotism provision at Florida Statute 112.3135 (2005) provides—

> 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.

Florida Statute 112.3135 defines the relevant terms as follows—

- *Public official* includes "an employee of an agency" (Id. at § (c).)
- *Agency* includes "a city" (Id. at § 112.3135 (a)(5).)
- *Relative* includes a "daughter" (Id. at § 112.3135 (d).)

THIRD, based on "Assurances" agreed to by the City of Miami when it contracted for VOCA funding, you may wish to seek an opinion from the State Attorney General and/or other agencies involved in administering the VOCA program. Specifically, the City of Miami pledged to—

> ... establish safeguards to prohibit employees from using their positions for a purpose that is or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. (*See* City of Miami Resolution 05-01255, Exhibit 3, "Assurances" at 5.)

FINALLY, City of Miami Administrative Orders and Personnel Rules may also apply in your case. You are advised to consult with your city attorney on these issues.

I have discussed this analysis with Robert Meyers, and he concurs.

Sincerely,

Victoria Frigo
Staff Attorney

copy: Manny Diaz, Investigator
Commission on Ethics & Public Trust

City of Miami

JOE ARRIOLA
City Manager

Mr. Robert Meyers
Executive Director
Dade County Ethics Committee
19 West Flagler Street, Suite #207
Miami, Florida 33130

Dear Mr. Meyers:

Mrs. Jennifer Nunez has applied for a part-time position of Victim Advocate at the City of Miami Police Department. She would be filling a vacant position for a VOCA grant funded by the State of Florida. Mrs. Nunez will be working under the direct supervision of Ms. Tania Bigles on Saturday and Sunday in the Homicide Unit. Lt. John W. Buhrmaster is the Commander of the Homicide Unit in the Criminal Investigations Division he is Ms. Bigles immediate supervisor. Additionally there are five layers of supervision in the division in my chain of command.

Mrs. Nunez is my daughter and I am requesting an ethical opinion from the Dade County Ethics Committee as to the employment of my daughter into the position as a Victim Advocate.

Let me introduce myself to you, my name is Louis A. Vega, I am an Assistant Chief employed by the City of Miami Police Department. I am the division chief for the Criminal Investigations Division. My daughter will not be working under my direct supervision nor will I have any direct contact with her. Your cooperation in this matter is greatly appreciated.

Sincerely,

Louis A. Vega
Assistant Chief
Criminal Investigations Division

LAV:jwb

06 MAY -8 AM 12:48

City of Miami

FACSIMILE TRANSMITTAL SHEET

TO: Tonny Diaz

FROM: Tom Burkhalter

DATE: 05/08/06

TOTAL NO. OF PAGES INCLUDING COVER: 3 ϕ2

RE: IF YOU NEED ADDITIONAL INFORMATION,

Tony,

Thanks for your assistance

☐ URGENT X NEW ☐ ADDITIONAL INFORMATION

CONFIDENTIALITY NOTE

MIAMI POLICE DEPARTMENT
HOMICIDE UNIT
400 N.W. 2ND AVE.
MIAMI, FLORIDA 33128
OFFICE: (305) 579-6530
FAX: (305) 372-4600

MEMO

TO: Robert Meyers

INQ 06-67

FROM: Victoria Frigo

DATE: May 9, 2006

RE: RQO from Assistant Chief, City of Miami Police Department

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Q: May the City of Miami Police Department hire the daughter of its Assistant Chief as a victim-advocate, a position created and partially funded through a federal grant?

A: Factors to consider in responding:

1. The County Ethics Ordinance does not contain an anti-nepotism provision. Consequently, under the County Ordinance, the Police Department is not prohibited from hiring the daughter of its Assistant Chief.

   Precedent on this issue exists at RQO 01-78, in which Commissioner Sosa was allowed to hire her cousin's husband for a position on her staff.

2. Under Secction (g) of the Ethics Code, *Exploitation of official position prohibited*, the Assistant Chief cannot use his position "to secure special privileges or exemptions for himself or others."

   The Assistant Chief says that he will not *supervise* the newly hired victim-advocate, but he does not say who in the Police Department *hires* the victim-advocate. The Assistant Chief should be advised that he must avoid any *affirmative action* involving the hiring or promoting of his daughter.

   Precedent on this issue exists at RQO 99-24, in which the Risk Management Division was allowed to hire the nephew of a current employee because the current employee had no input in the selection process.

3. Additionally, the intent of the Ethics Ordinance is to ensure integrity and restore public confidence in government. (§ 2-1067.) Keeping these guidelines in mind, the Assistant Chief should avoid any actions that would appear to impede the recruitment or hiring of those best qualified to serve in this position.

4. The Assistant Chief should seek an opinion from the State Ethics Commission, which has jurisdiction in this matter. Specifically, Fla. Stat. 112.3135 (2)(a) provides—

   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. (Emphasis added)

Under Florida law, these definitions apply—

- *Public official* includes "an employee of an agency," at § 112.3135 (c)
- *Agency* includes "a city," at § 112.3135 (a)(4)
- *Relative* includes a "daughter," at § 112.3135 (d)

5. The Assistant Chief should obtain an opinion from the federal agency granting the VOCA funding and/or from the State Attorney General, who administers the grant. Before obtaining the grant, the City of Miami pledged "Assurances" to the federal government, which included specifically the pledge to—

   > ... establish *safeguards to prohibit employees from using their positions* for a purpose that is or *give the appearance* of being *motivated by a desire for private gain for themselves or others*, particularly those with whom they have *family*, business, or other ties. (City of Miami Resolution 05-01255, Exhibit 3, "Assurances" at 5.) (Emphasis added.)

6. Other prohibitions may apply under City or County anti-nepotism Administrative Orders and Personnel Rules.

COMMISSION ON ETHICS AND PUBLIC TRUST

Memo

To: Bernard McGriff, Interim Director
General Services Administration

From: Robert Meyers, Executive Director
Commission on Ethics and Public Trust

Date: 05/25/99

Re: Request for Opinion (RQO 99-24)

In your memorandum of May 14, 1999 you state that you wish to extend a job offer to an individual who is the nephew of another County employee in the same division. You further state that the prospective employee will not be supervised by the current employee. From the table of organization you provided me, the two employees seemingly have distinct job functions and responsibilities.

The Code of Ethics and Conflict of Interest Ordinance contains a provision that could apply to County employees who are related to one another. Specifically, Section 2-11.1(g) prohibits County employees from using or attempting to use one's official position to secure special privileges and exemptions. In theory, an attempt to manipulate the recruitment process to secure employment for a family member would most likely constitute a violation of this section. Secondly, an employee with supervisory authority over a family member who is also employed by the County could conceivably violate this section as well upon a showing that special privileges were given to the relative.

In the instant case, the current employee had no input into the selection process and the family members are not in a superior-subordinate relationship. Given these facts, there is no violation of the County's Conflict of Interest and Code of Ethics Ordinance.

If you have any additional questions, feel free to contact me at your convenience.

RQD 99-24

COMMISSION ON ETHICS
AND PUBLIC TRUST

99 MAY 21 PM 2:55

MEMORANDUM

TO: *Robert Myers*
Director
Miami-Dade Ethics Commission

DATE: *May 14, 1999*

FROM: *Bernard McGriff*
Interim Director
General Services Administration

SUBJECT: *Recruitment*

Issue:

We are seeking your opinion regarding extending a job offer to an individual who is related to another County employee in the same division.

Background:

Interviews were conducted to fill an account clerk vacancy in the Accounting Section within the Risk Management Division. The highest rated candidate, Luciano Soto, is the nephew of Miriam Bergouignan, Accountant I, in the Accounting Section.

The position Mr. Soto was interviewed for is responsible for auditing payables for the workers' compensation and liability units. Ms. Bergouignan handles the payment of premiums to our health plans, including wire transfers and account reconciliations. Mrs. Bergouignan would have no supervisory responsibility for Mr. Soto. Mr. Soto would report to Mr. Robert Diaz, Accountant II, as does Mrs. Bergouignan.

A copy of the Risk Management Division table of organization is attached for your review, along with the essential job functions for the account clerk position and Mrs. Bergouignan's position.

Your review of this matter is appreciated. Should you have any questions, please do not hesitate to contact Marsha Pascual, Director, Risk Management Division at (305) 375-4281.

MP/gv

July 11, 2001

The Honorable Rebecca Sosa
Board of County Commissioners
District Six
111 N.W. First Street
Suite 220
Miami, FL 33129-1963

RE: REQUEST FOR ADVISORY OPINION 01-78

Dear Commissioner Sosa:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on July 10, 2001 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts of interest if she hires the spouse of a family member to serve as her chief of staff.

In your letter, you advised the Commission that you were recently elected as a county commissioner. When you were elected, you hired Yolanda Aguilar, former City Manager of West Miami as her chief of staff. Aguilar subsequently left the position to return to her employment as West Miami City Manager. You recently interviewed Raul De La Torre, a federal Customs employee, for the position. De La Torre is the husband of Sosa's cousin, Judge Blanca Bianchi De La Torre. You would like to offer the position to De La Torre.

The Commission found that The Conflict of Interest and Code of Ethics ordinance does not prohibit you from hiring your cousin's husband to serve as chief of staff. The Conflict of Interest and Code of Ethics ordinance does not contain an anti-nepotism provision. The only provision that might be

applicable is Section 2-11.1(g) which prohibits employees and officials from using their position to secure a special benefit for themselves or others. However, other individuals were interviewed for the position and there is no showing that De La Torre is receiving a special benefit.

The county does have an anti-nepotism employment policy pursuant to the state anti-nepotism law which prohibits county officials from hiring or being involved in the appointment of certain close relatives. While the policy prohibits the hiring of a first cousin, the policy does not extend to the spouse of a first cousin.

Therefore, the anti-nepotism policy does not prohibit you from hiring the spouse of your cousin to serve as your chief of staff.

If you have any questions regarding this matter, please call Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director

ROO 01-78

INTEROFFICE MEMORANDUM

TO: ROBERT A. MEYERS, EXECUTIVE DIRECTOR
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

FROM: COMMISSIONER RECECA SOSA, DISTRICT 6

SUBJECT: CHIEF OF STAFF POSITION

DATE: 7/3/01

Mr. Robert A. Meyers

Pursuant to our conversation I'm requesting a written opinion on the issue presented to you.

I hired Yolanda Aguilar as my Chief of Staff when I was elected Commissioner, a few days after she went back to her former position as City Manager for the City of West Miami. Since then I have interviewed candidates for that position unsuccesfully.

This week I interviewed Raul De La Torre who works for the Federal Government in Customs at the Miami International Airport. Mr. De La Torre has the qualifications that I have been looking for, administrative experience, hard worker, organized and with no ties to the system, willing to start a new challenge.

My concern is that he is married to my cousin Judge Blanca Bianchi De La Torre. Even when we are not blood related I want to know if it would be ethical to hire him for the position.

112.3135 Restriction on employment of relatives.--

(1) In this section, unless the context otherwise requires:

(a) "Agency" means:

1. A state agency, except an institution under the jurisdiction of the Division of Universities of the Department of Education;

2. An office, agency, or other establishment in the legislative branch;

3. An office, agency, or other establishment in the judicial branch;

4. A county;

5. A city; and

6. Any other political subdivision of the state, except a district school board or community college district.

(b) "Collegial body" means a governmental entity marked by power or authority vested equally in each of a number of colleagues.

(c) "Public official" means an officer, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals.

(d) "Relative," for purposes of this section only, with respect to a public official, means 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.

(2)(a) 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. However, this subsection shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This subsection does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide.

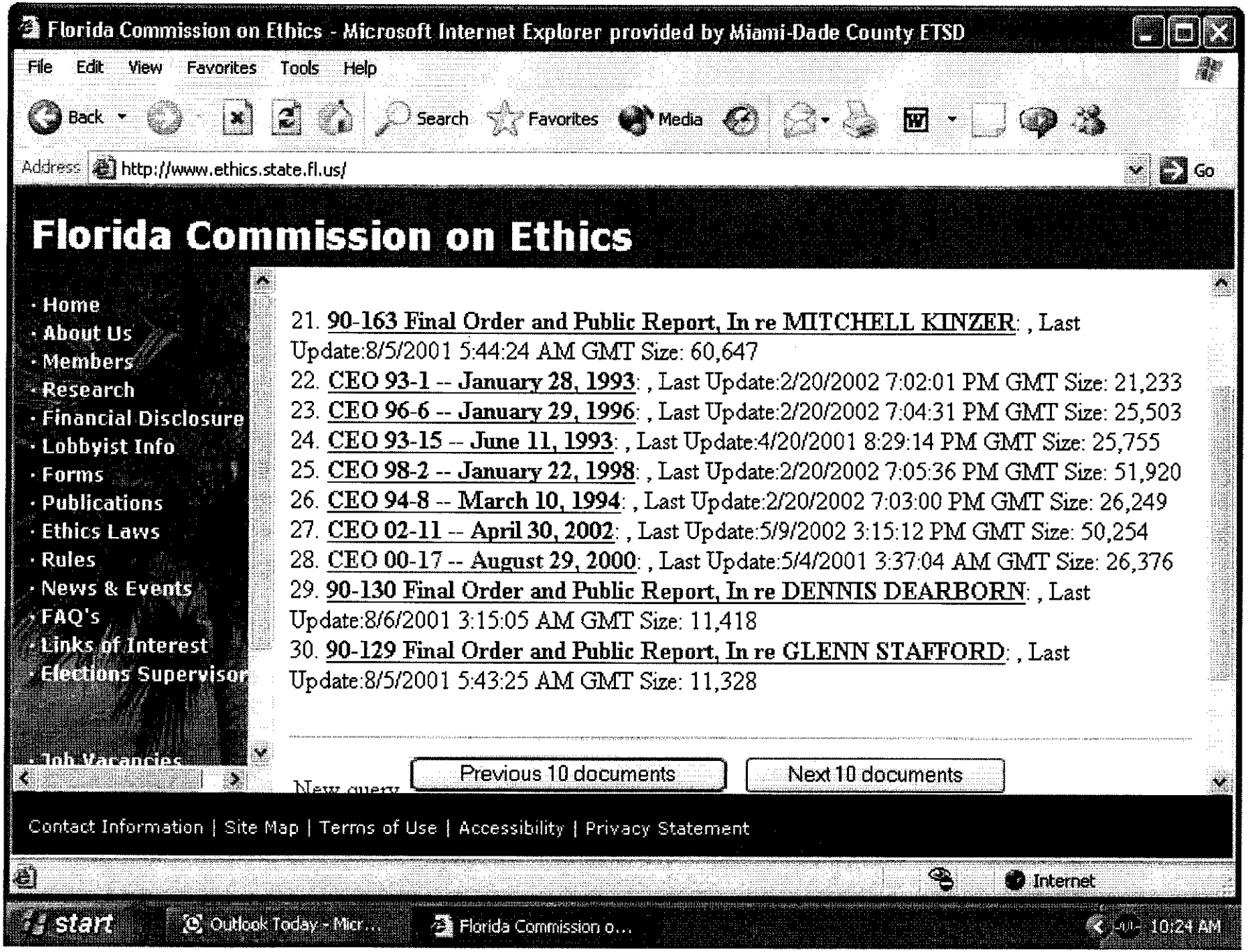
(b) Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

(3) An agency may prescribe regulations authorizing the temporary employment, in the event of an emergency as defined in s. 252.34(3), of individuals whose employment would be otherwise prohibited by this section.

(4) Legislators' relatives may be employed as pages or messengers during legislative sessions.

History.--ss. 1, 2, 3, ch. 69-341; ss. 15, 35, ch. 69-106; s. 70, ch. 72-221; s. 3, ch. 83-334; s. 1, ch. 89-67; s. 4, ch. 90-502; s. 2, ch. 94-277; s. 1407, ch. 95-147; s. 1, ch. 98-160; s. 42, ch. 99-2.

Note.--Former s. 116.111.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· Job Vacancies
21. 90-163 Final Order and Public Report, In re MITCHELL KINZER: , Last Update:8/5/2001 5:44:24 AM GMT Size: 60,647
22. CEO 93-1 -- January 28, 1993: , Last Update:2/20/2002 7:02:01 PM GMT Size: 21,233
23. CEO 96-6 -- January 29, 1996: , Last Update:2/20/2002 7:04:31 PM GMT Size: 25,503
24. CEO 93-15 -- June 11, 1993: , Last Update:4/20/2001 8:29:14 PM GMT Size: 25,755
25. CEO 98-2 -- January 22, 1998: , Last Update:2/20/2002 7:05:36 PM GMT Size: 51,920
26. CEO 94-8 -- March 10, 1994: , Last Update:2/20/2002 7:03:00 PM GMT Size: 26,249
27. CEO 02-11 -- April 30, 2002: , Last Update:5/9/2002 3:15:12 PM GMT Size: 50,254
28. CEO 00-17 -- August 29, 2000: , Last Update:5/4/2001 3:37:04 AM GMT Size: 26,376
29. 90-130 Final Order and Public Report, In re DENNIS DEARBORN: , Last Update:8/6/2001 3:15:05 AM GMT Size: 11,418
30. 90-129 Final Order and Public Report, In re GLENN STAFFORD: , Last Update:8/5/2001 5:43:25 AM GMT Size: 11,328
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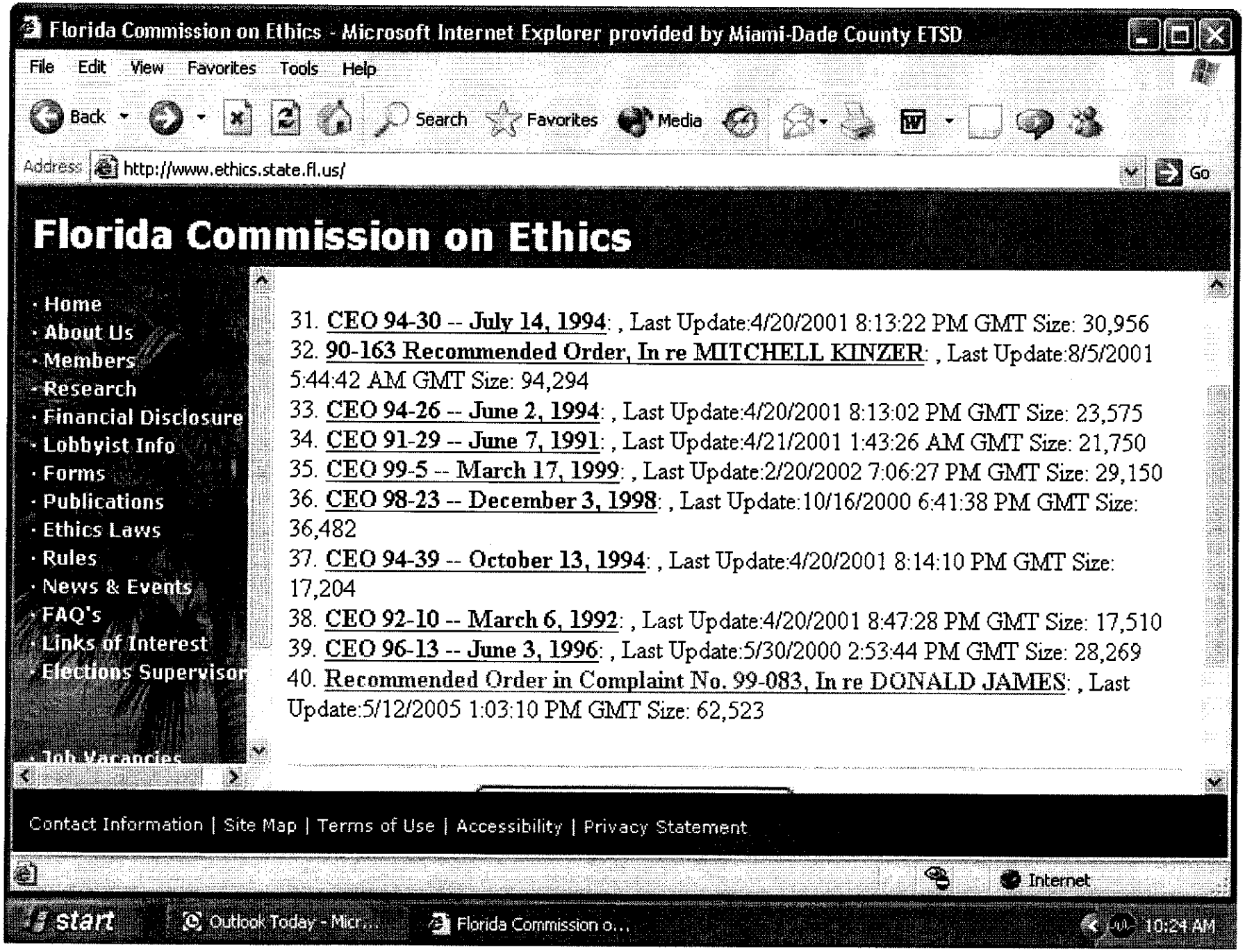
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· Rules
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· FAQ's
· Links of Interest
· Elections Supervisor
· Job Vacancies
31. CEO 94-30 -- July 14, 1994: , Last Update:4/20/2001 8:13:22 PM GMT Size: 30,956
32. 90-163 Recommended Order, In re MITCHELL KINZER: , Last Update:8/5/2001 5:44:42 AM GMT Size: 94,294
33. CEO 94-26 -- June 2, 1994: , Last Update:4/20/2001 8:13:02 PM GMT Size: 23,575
34. CEO 91-29 -- June 7, 1991: , Last Update:4/21/2001 1:43:26 AM GMT Size: 21,750
35. CEO 99-5 -- March 17, 1999: , Last Update:2/20/2002 7:06:27 PM GMT Size: 29,150
36. CEO 98-23 -- December 3, 1998: , Last Update:10/16/2000 6:41:38 PM GMT Size: 36,482
37. CEO 94-39 -- October 13, 1994: , Last Update:4/20/2001 8:14:10 PM GMT Size: 17,204
38. CEO 92-10 -- March 6, 1992: , Last Update:4/20/2001 8:47:28 PM GMT Size: 17,510
39. CEO 96-13 -- June 3, 1996: , Last Update:5/30/2000 2:53:44 PM GMT Size: 28,269
40. Recommended Order in Complaint No. 99-083, In re DONALD JAMES: , Last Update:5/12/2005 1:03:10 PM GMT Size: 62,523
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CEO 90-62 -- September 7, 1990

ANTI-NEPOTISM

CITY POLICE CHIEF'S FATHER SERVING AS CITY POLICE OFFICER

To: Michael H. Hatfield, City Attorney, City of Umatilla

SUMMARY:

Section 112.3135, Florida Statutes, prohibits a city police chief from appointing, employing, promoting, or advancing his father to a position in the city police department. However, when the father was employed with the police department prior to the time that the police chief assumed his position, the father's employment would be grandfathered in. So long as the father were not promoted or advanced subsequently, the anti-nepotism law does not preclude the police chief from supervising his father. As favoritism in the terms or conditions of the father's employment may violate Section 112.313(6), Florida Statutes, the police chief should be cautioned against misuse of his official position to benefit his father.

QUESTION:

Does the anti-nepotism law prohibit a city police chief and his father from serving together in the city's police department, where the father was employed with the police department prior to the time that the police chief assumed his position?

Your question is answered in the negative.

In your letter of inquiry, you advise that Mr. Stephen A. Foster serves as the Chief of Police for the City of Umatilla. You also advise that in 1983, after both he and his father had obtained full-time employment with the City Police Department, he was elevated to the position of Chief. Since that time, you advised in a telephone conversation with our staff, the father has not been advanced or promoted. Any salary increases the father has received have been the result of across-the-board increases for the members of the Department, rather than being based upon evaluations of his work.

Under the City Charter the Police Department is part of the Department of Public Safety, which is headed by the City Clerk. The Police Chief evaluates the members of the police force and has exclusive control over their stationing and transfer, subject to the approval of the City Clerk. In addition, the Police Chief has the authority to suspend police officers for cause. The City Clerk, as head of the Public Safety Department, is responsible for final action in such cases.

Regarding your question, Section 112.3135(2)(a), Florida Statutes, provides:

> 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 he is serving or over which he 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.

Chapter 89-67, Laws of Florida, enacted Section 112.3135 by transferring the anti-nepotism law from Section 116.111, Florida Statutes, effective June 19, 1989, with only one, minor change. Because the anti-nepotism law presently is within our jurisdiction, we will address your question in the context of the present application of the law.

The Attorney General consistently interpreted Section 116.111, Florida Statutes, not to require the discharge of a person whose relative took the higher position after the person's employment or otherwise where the prohibited relationship came into being after the person's employment. For example, where a public official married one of his employees, the employee was allowed to continue to work in the same position and to participate in routine raises, but could not be promoted or advanced, or recommended or advocated for a promotion or advancement. See AGO 77-36 and AGO 73-351. We previously approved of this interpretation of the anti-nepotism law in CEO 89-46.

In Slaughter v. City of Jacksonville, 338 So.2d 902 (Fla. 1st DCA 1976), the court found "advancement" or "promotion" to mean an increase in grade which elevates an employee to a higher rank or position of greater personal dignity or importance. Therefore, under the circumstances presented here it does not appear that the Police Chief's father has been promoted or advanced within the meaning of the anti-nepotism law.

By its terms, the law addresses only appointment, employment, promotions, and advancement. As it does not address any other aspect of the supervisory authority a public official may have over a relative, we do not believe that it can be applied to prohibit an official from such actions as stationing, transferring, evaluating, or even suspending a relative. This was recognized in AGO 73-397, where it was found that a city could hire a policewoman who was the daughter of a patrolman who at times would supervise his daughter. Therefore, we find that so long as the Chief of Police does not promote, advance, or advocate or recommend the promotion or advancement of his father, the two may continue to serve in the Police Department.

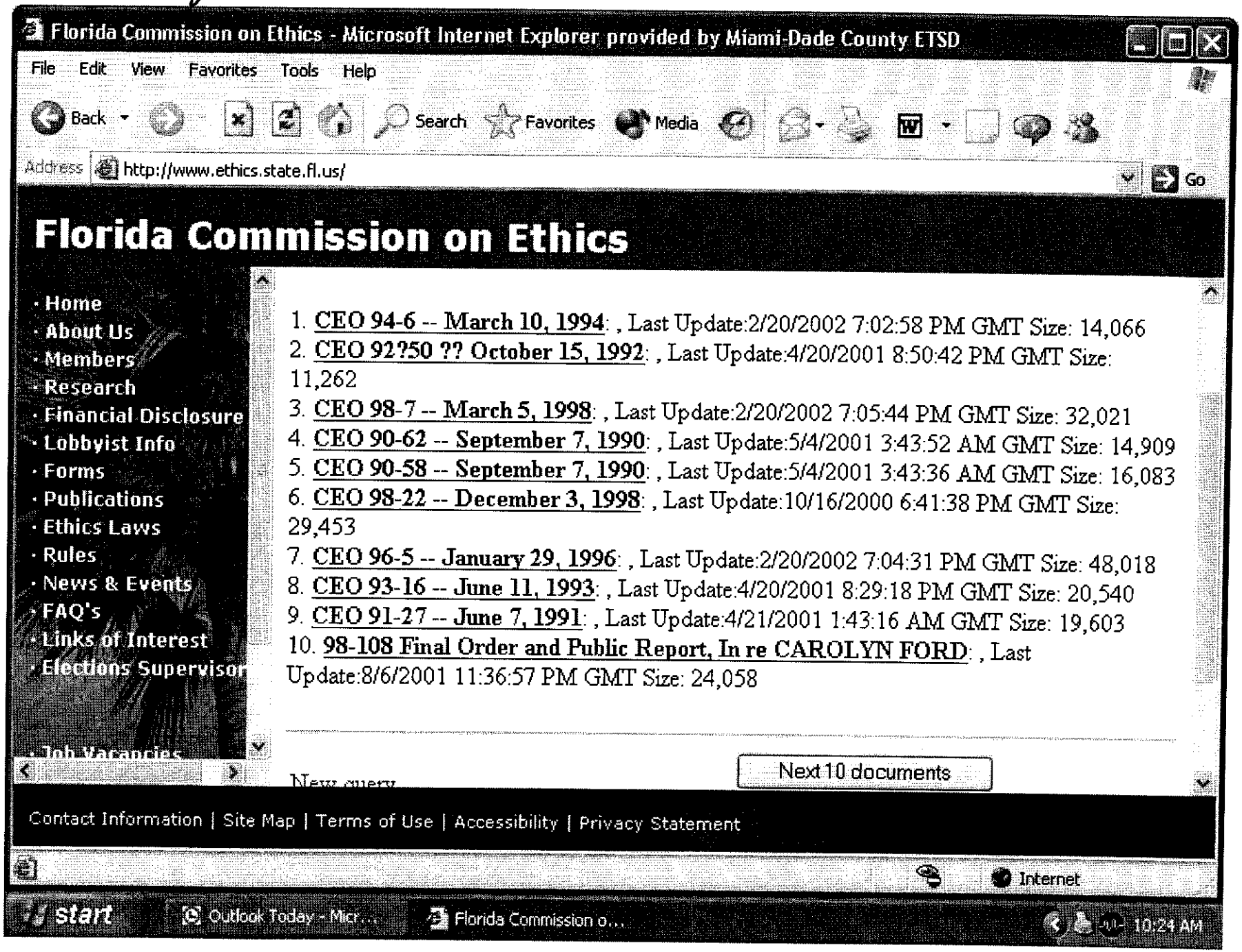
We do not mean to imply that the Police Chief's discretion regarding the terms or conditions of his father's employment is unlimited. Section 112.313(6), Florida Statutes, provides:

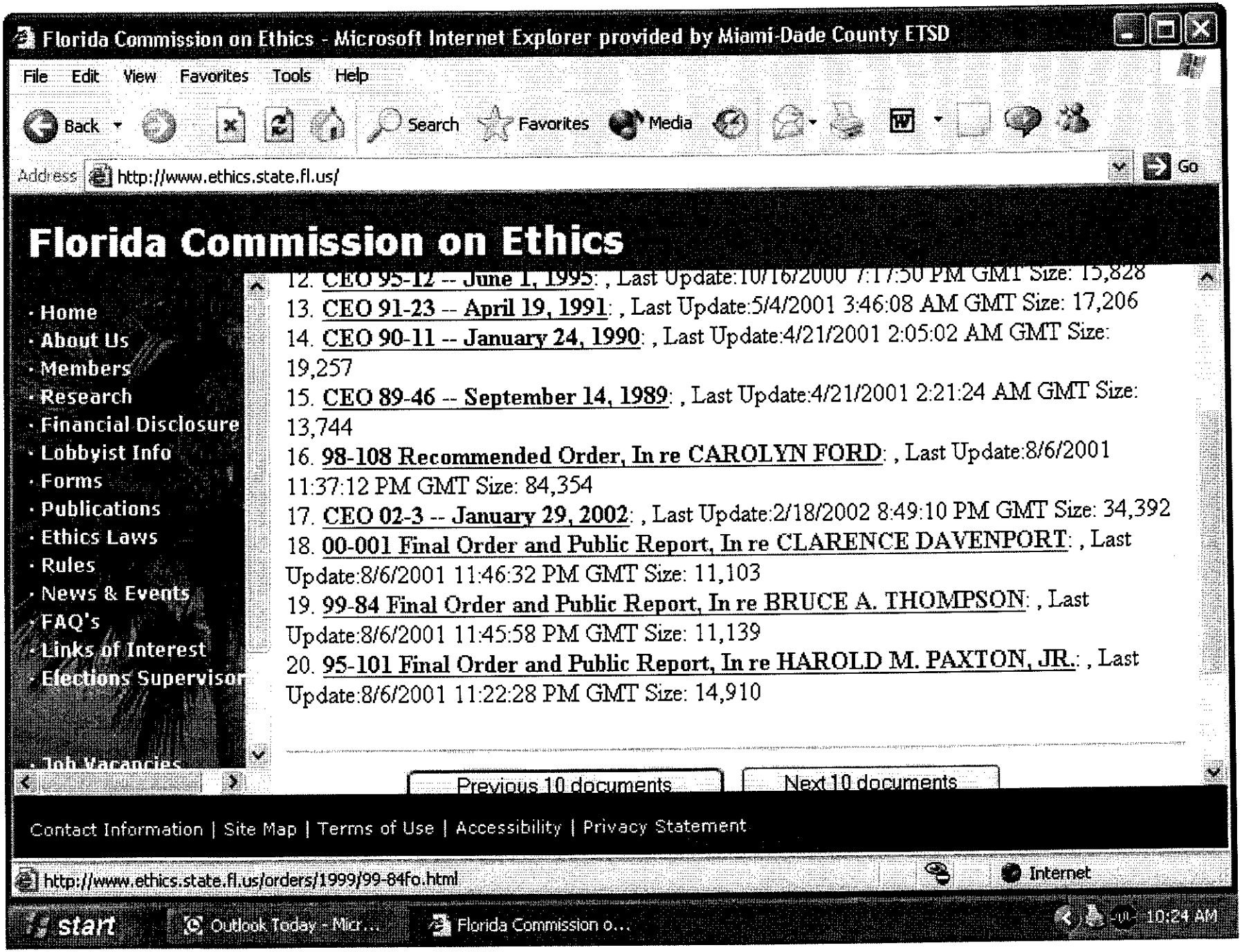
> MISUSE OF PUBLIC POSITION.--No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31.

In light of this prohibition, we suggest that the Police Chief should be cautioned to avoid even the appearance of favoritism toward his father when supervising the members of the police force.

Accordingly, we find that Section 112.3135, Florida Statutes, does not prohibit the subject Chief of Police and his father from serving together in the Police Department, so long as he does not promote, advance, or advocate or recommend the promotion or advancement of his father.

Anti nepotism 112.3135

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· Job Vacancies
12. CEO 95-12 -- June 1, 1995: , Last Update:10/16/2000 7:17:50 PM GMT Size: 15,828
13. CEO 91-23 -- April 19, 1991: , Last Update:5/4/2001 3:46:08 AM GMT Size: 17,206
14. CEO 90-11 -- January 24, 1990: , Last Update:4/21/2001 2:05:02 AM GMT Size: 19,257
15. CEO 89-46 -- September 14, 1989: , Last Update:4/21/2001 2:21:24 AM GMT Size: 13,744
16. 98-108 Recommended Order, In re CAROLYN FORD: , Last Update:8/6/2001 11:37:12 PM GMT Size: 84,354
17. CEO 02-3 -- January 29, 2002: , Last Update:2/18/2002 8:49:10 PM GMT Size: 34,392
18. 00-001 Final Order and Public Report, In re CLARENCE DAVENPORT: , Last Update:8/6/2001 11:46:32 PM GMT Size: 11,103
19. 99-84 Final Order and Public Report, In re BRUCE A. THOMPSON: , Last Update:8/6/2001 11:45:58 PM GMT Size: 11,139
20. 95-101 Final Order and Public Report, In re HAROLD M. PAXTON, JR.: , Last Update:8/6/2001 11:22:28 PM GMT Size: 14,910
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Supreme Court of Florida

626 So. 2d 192 (1993)

ORIGINAL

No. 80,780

CITY OF MIAMI BEACH, Petitioner,

vs.

RUSSELL GALBUT, Respondent.

[October 21, 1993]

KOGAN, J.

We have for review Galbut v. City of Miami Beach, 605 So. 2d 466 (Fla. 3d DCA 1992), in which the court certified the following question as one of great public importance:

> WHETHER THE ANTI-NEPOTISM LAW PROHIBITS THE APPOINTMENT OF A CITY COMMISSIONER'S RELATIVE TO THE CITY'S BOARD OF ADJUSTMENT WHERE (1) APPOINTMENTS ARE MADE BY A FIVE-SEVENTHS VOTE OF THE CITY COMMISSION; (2) THE RELATED CITY COMMISSIONER ABSTAINS FROM VOTING; AND (3) THE RELATED CITY COMMISSIONER TAKES NO ACTION WHICH IN ANY WAY ADVOCATES THE APPOINTMENT OF THE RELATIVE.

Id. at 468. We have jurisdiction under Article V, section 3(b)(4) of the Florida Constitution.

Russell Galbut served on the Miami Beach Zoning Board of

Adjustment for ten years. Members of this Board serve without compensation and are chosen by a five-sevenths vote of the City Commission for a one-year term. In 1991, Galbut's father-in-law, Seymour Eisenberg, was elected to the City Commission. After the election, Galbut's term on the Board expired and he sought reappointment. The City Attorney determined that section 112.3135(2)(a), Florida Statutes (1991), prohibited Galbut's reappointment. Section 112.3135(2)(a) provides:

> 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 he is serving or over which he 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.

In response to the City Attorney's conclusion, Galbut brought a declaratory action in circuit court. The court adopted a general master's report finding that the anti-nepotism law precluded Galbut's reappointment. On appeal, the district court reversed, holding that the anti-nepotism law did not preclude Galbut's reappointment by the collegial body if Galbut's father-in-law recused himself and did not in any way advocate the reappointment. The court reasoned that because there was no affirmative action by the individual public official either to make or advocate Galbut's appointment, this case did not fit

within the plain language of the statute. The court also noted that due to the statute's penal nature, any doubts as to its meaning must be resolved in favor of a narrow construction. 605 So. 2d at 467. For the reasons set forth below, we agree that section 112.3135(2) does not prohibit Galbut's reappointment to the Board of Adjustment.

The City of Miami Beach maintains that Florida's anti-nepotism law should be liberally construed to mean that relatives of members of appointing authorities should not be appointed by boards or commissions on which their relatives serve. The City maintains that a public official's abstention will not resolve the concerns the anti-nepotism law was designed to address.

It is well settled that where a statute is clear and unambiguous, as it is here, a court will not look behind the statute's plain language for legislative intent. See In Re McCollam, 612 So. 2d 572, 573 (Fla. 1993); Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984). A statute's plain and ordinary meaning must be given effect unless to do so would lead to an unreasonable or ridiculous result. 612 So. 2d at 573; 450 So. 2d at 219.

The plain language of the statute at issue indicates that only overt actions by a public official resulting in the appointment of that official's relative are prohibited. Section 112.3135(2)(a) provides in pertinent part:

> A public official may not appoint . . . or advocate for appointment . . . to a position in the agency . . . over which he exercises jurisdiction or control any individual who is

> a relative of the public official. An individual may not be appointed . . . to a position in an agency if such appointment . . . has been advocated by a public official . . . exercising jurisdiction or control over the agency, who is a relative of the individual.

(Emphasis added). As the district court noted,

> [t]he statute is addressed to the individual public official and to the relative of that public official. It prohibits the public official from taking overt action to appoint a relative, either by making the appointment, or advocating the relative for appointment. Similarly, the relative may not accept the appointment if the appointment has been made or advocated by the related public official.

605 So. 2d at 467.

This construction is consistent with other provisions of chapter 112. In particular, section 112.311(2), Florida Statutes (1991), provides that it is

> essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve.

In a similar vein, section 112.311(4), Florida Statutes (1991), makes clear that the act was intended to protect the integrity of the government and to facilitate the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest "without creating unnecessary barriers to public service."

Moreover, even if we were to find the anti-nepotism statute

ambiguous, in light of its penal nature,[1] a strict construction would be in order. State ex rel. Robinson v. Keefe, 111 Fla. 701, 149 So. 638 (Fla. 1933) (strictly construing predecessor to current anti-nepotism law because it was penal in nature). When a statute imposes a penalty, any doubt as to its meaning must be resolved in favor of strict construction so that those covered by the statute have clear notice of what conduct the statute proscribes. State v. Llopis, 257 So. 2d 17, 18 (Fla. 1971).

Thus, the City's position that Florida's anti-nepotism statute should be liberally interpreted for the public benefit, in accordance with past Attorney General and Ethics Commission opinions on this issue, is clearly misplaced. We acknowledge the resulting conflict with the administrative decisions cited by the City, but point out our authority to overrule agency decisions that erroneously interpret a statute. See, e.g., Florida Indus. Comm'n v. Manpower, Inc., 91 So. 2d 197 (Fla. 1956) (although court was reluctant to interfere with the agency's interpretation of a penal statute, it overruled extensive and erroneous administrative interpretation).

Also misplaced is the City's reliance on Morris v. Seely, 541 So. 2d 659 (Fla. 1st DCA), review dismissed, 548 So. 2d 663 (Fla. 1989), in which the First District Court of Appeal held that the anti-nepotism law precluded the promotion of a sheriff's brother employed as a deputy despite the fact that the sheriff abstained from involvement in the promotion decision. Morris is

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[1] See § 112.317, Fla. Stat. (1991).

clearly distinguishable from the present case in that the public official in Morris could not completely abstain from taking part in his relative's promotion. Id. at 660. Although the sheriff abstained from the decision-making process, once the decision was made, the sheriff or his designee had to sign the promotion appointment. Id. By signing the appointment, the sheriff took affirmative action to promote his brother, contrary to the plain language of the anti-nepotism law. In this case, only five of the seven City Commissioners must vote in favor of Galbut to affirm his reappointment; no affirmative action by Commissioner Eisenberg is required to effectuate the reappointment.

In conclusion, consistent with the plain language of section 112.3135(2)(a), we construe Florida's anti-nepotism law so as not to create an unnecessary barrier to public service by otherwise qualified individuals, such as Galbut.[2] Accordingly, we approve the decision below, and hold that Florida's anti-nepotism law does not prohibit Galbut's reappointment by a five-sevenths vote of the city commission, so long as Galbut's city commissioner relative abstains from voting and in no way advocates the reappointment.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, SHAW, GRIMES and HARDING, JJ., concur.

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[2] Galbut served for ten years on the Board of Adjustment and is obviously well qualified for the position he seeks.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance
Third District - Case No. 92-86

(Dade County)

Laurence Feingold, City Attorney and Jean K. Olin, First Assistant City Attorney, Miami Beach, Florida,

for Petitioner

David H. Nevel, Miami Beach, Florida,

for Respondent

Philip C. Claypool, General Counsel and Julia Cobb Costas, Staff Counsel, Tallahassee, Florida,

Amicus Curiae for State of Florida Commission on Ethics

Attachment A

OMB APPROVAL NO. 1121-0140
EXPIRES: 1/31/96

ASSURANCES

The Applicant hereby assures and certifies compliance with all Federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars No. A-21, A-110, A-122, A-128, A-87; E.O. 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements—28 CFR, Part 66, Common Rule, that govern the application, acceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

3. It will comply with provisions of Federal law which limit certain political activities of employees of a State or local unit of government whose principal employment is in connection with an activity financed in whole or in part by Federal grants. (5 USC 1501, et seq.)

4. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act if applicable.

5. It will establish safeguards to prohibit employees from using their positions for a purpose that is or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

6. It will give the sponsoring agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.

7. It will comply with all requirements imposed by the Federal Sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

8. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed in the Environmental protection Agency's (EPA-list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

9. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that had been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

10. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

11. It will comply, and assure the compliance of all its subgrantees and contractors, with the applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1; and all other applicable Federal laws, orders, circulars, or regulations.

12. It will comply with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Federal laws or regulations applicable to Federal Assistance Programs.

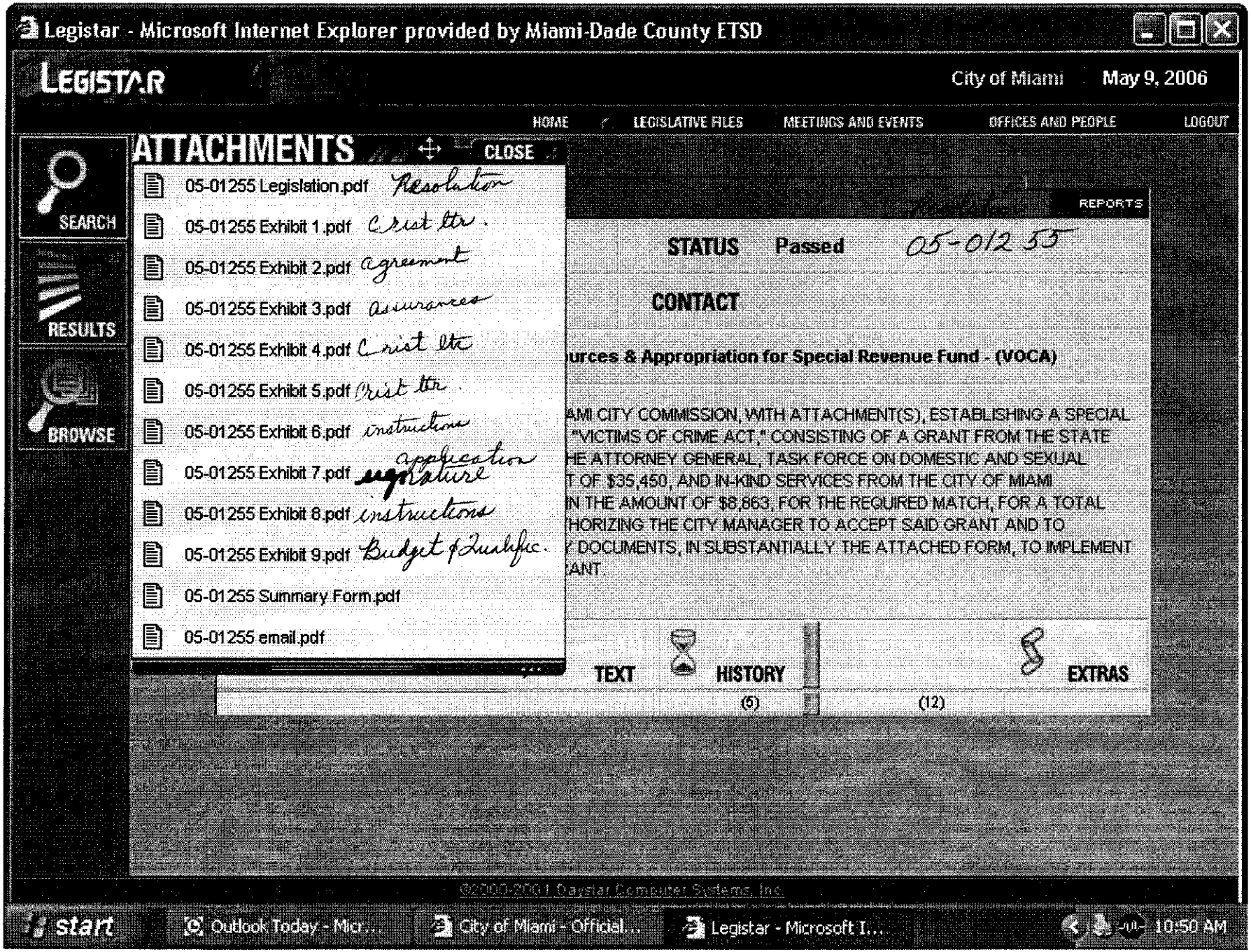
13. It will comply, and all its contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans With Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.

14. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

15. It will provide an Equal Employment Opportunity Program if required to maintain one, where the application is for $500,000 or more.

16. It will comply with the provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.

Signature _____ Date _____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urces & Appropriation for Special Revenue Fund - (VOCA)
AMI CITY COMMISSION, WITH ATTACHMENT(S), ESTABLISHING A SPECIAL
"VICTIMS OF CRIME ACT," CONSISTING OF A GRANT FROM THE STATE
HE ATTORNEY GENERAL, TASK FORCE ON DOMESTIC AND SEXUAL
T OF $35,450, AND IN-KIND SERVICES FROM THE CITY OF MIAMI
N THE AMOUNT OF $8,863, FOR THE REQUIRED MATCH, FOR A TOTAL
HORIZING THE CITY MANAGER TO ACCEPT SAID GRANT AND TO
DOCUMENTS, IN SUBSTANTIALLY THE ATTACHED FORM, TO IMPLEMENT
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City of Miami

Legislation

Resolution

City Hall
3500 Pan American Drive
Miami, FL 33133
www.ci.miami.fl.us

File Number: 05-01255 **Final Action Date:**

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), ESTABLISHING A SPECIAL REVENUE FUND ENTITLED: "VICTIMS OF CRIME ACT," CONSISTING OF A GRANT FROM THE STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, TASK FORCE ON DOMESTIC AND SEXUAL VIOLENCE, IN THE AMOUNT OF $35,450, AND IN-KIND SERVICES FROM THE CITY OF MIAMI DEPARTMENT OF POLICE, IN THE AMOUNT OF $8,863, FOR THE REQUIRED MATCH, FOR A TOTAL AMOUNT OF $44,313; AUTHORIZING THE CITY MANAGER TO ACCEPT SAID GRANT AND TO EXECUTE THE NECESSARY DOCUMENTS, IN SUBSTANTIALLY THE ATTACHED FORM, TO IMPLEMENT ACCEPTANCE OF SAID GRANT.

WHEREAS, the City of Miami ("City") Department of Police as a First Responder, received in 2004 over 358,000 calls requiring assistance, and as a result, 33,553 crimes were recorded, of which 9,138 were crimes against a person; and

WHEREAS, the City Department of Police wants to maintain and enhance the quality of services to meet the immediate needs of crime victims; and

WHEREAS, the State of Florida, Office of the Attorney General, Task Force on Domestic and Sexual Violence, has approved an award, in the amount of $35,450, which requires a required $8,863, match by the City, towards salaries and necessary expenses for the operation of this program; and

WHEREAS, any purchases would have to comply with applicable City Code purchasing requirements;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The following new Special Revenue Fund is established and resources are appropriated as described below:

FUND TITLE:	VICTIMS OF CRIME ACT ("VOCA")	
RESOURCES:	Office of the Attorney General, Task Force on Domestic and Sexual Violence	$35,450
	City Department of Police General Operating Budget	$ 8,863
APPROPRIATIONS:		$44,313

Section 2. The City Manager is authorized {1} to execute the necessary documents, in substantially the attached form, to implement acceptance of said grant.

Section 3. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.{2}

APPROVED AS TO FORM AND CORRECTNESS:

JORGE L. FERNANDEZ
CITY ATTORNEY

Footnotes:

{1} The herein authorization is further subject to compliance with all requirements that may be imposed by the City Attorney, including but not limited to those prescribed by applicable City Charter and Code provisions.

{2} If the Mayor does not sign this Resolution, it shall become effective at the end of ten calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.

Attachment A

OMB APPROVAL NO. 1121-0140
EXPIRES: 1/31/96

ASSURANCES

The Applicant hereby assures and certifies compliance with all Federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars No. A-21, A-110, A-122, A-128, A-87; E.O. 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements—28 CFR, Part 66, Common Rule, that govern the application, acceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

3. It will comply with provisions of Federal law which limit certain political activities of employees of a State or local unit of government whose principal employment is in connection with an activity financed in whole or in part by Federal grants. (5 USC 1501, et seq.)

4. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act if applicable.

5. It will establish safeguards to prohibit employees from using their positions for a purpose that is or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

6. It will give the sponsoring agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.

7. It will comply with all requirements imposed by the Federal Sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

8. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed in the Environmental protection Agency's (EPA-list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

9. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that had been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

10. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

11. It will comply, and assure the compliance of all its subgrantees and contractors, with the applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1; and all other applicable Federal laws, orders, circulars, or regulations.

12. It will comply with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Federal laws or regulations applicable to Federal Assistance Programs.

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14. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

15. It will provide an Equal Employment Opportunity Program if required to maintain one, where the application is for $500,000 or more.

16. It will comply with the provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.

Signature

Date

AGREEMENT BETWEEN THE STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL
AND

CITY OF MIAMI POLICE DEPARTMENT

GRANT NO. V5246

THIS AGREEMENT is entered into in the City of Tallahassee, Leon County, Florida by and between the State of Florida, Office of the Attorney General, the pass-through agency for the Victims of Crime Act (VOCA), Catalog of Federal Domestic Assistance (CFDA) Number 16.575, hereafter referred to as the OAG, an agency of the State of Florida with headquarters being located in The Attorney General's Office, PL-01, The Capitol, Tallahassee, Florida 32399-1050, and the City of Miami Police Department, 3500 Pan American Drive, Miami, Florida 33133 thereafter referred to as the Provider. The parties hereto mutually agree as follows:

ARTICLE 1. ENGAGEMENT OF THE PROVIDER

The OAG hereby agrees to engage the Provider and the Provider hereby agrees to perform services as follows. The Provider understands and agrees all services are to be performed solely by the Provider and may not be subcontracted for or assigned without prior written consent of the OAG. The Provider agrees to supply the OAG with written notification of any change in the appointed representative for this Agreement. This Agreement shall be performed in accordance with the Victims of Crime Act (VOCA), Victim Assistance Grant Final Program Guidelines, Federal Register, Vol. 62, No. 77, April 22, 1997, pp. 19607-19621 and the U.S. Department of Justice, Office of Justice Programs, Financial Guide.

ARTICLE 2. SCOPE OF SERVICES

The Provider agrees to undertake, perform and complete the services as outlined in the original grant application unless otherwise approved in writing by the OAG.

ARTICLE 3. TIME OF PERFORMANCE

This Agreement shall become effective on October 1, 2005, or on the date when the Agreement has been signed by all parties, whichever is later, and shall continue through September 30, 2006. No costs may be incurred by the Provider until the Agreement has been signed by all parties. The original signed document must be returned to the OAG by October 15, 2005, or the Agreement shall be voidable at the option of the OAG.

ARTICLE 4. AMOUNT OF FUNDS

The OAG agrees to pay the Provider for services completed in accordance with the terms and conditions of the Agreement. The total sum of monies paid to the Provider for the costs incurred under this Agreement shall not exceed $35,450. The Provider agrees not to commingle grant funds with other personal or business accounts. The U.S. Department of Justice, Office of Justice Programs, Financial Guide does not require physical segregation of cash deposits or the establishment of any eligibility requirements for funds which are provided to a recipient. However, the accounting systems of Providers must ensure OAG funds are not commingled with

funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another. Where a Provider's accounting system cannot comply with this requirement, the Provider shall establish a system to provide adequate fund accountability for each project.

In accordance with the provisions of Section 287.0582, F.S., if the terms of this Agreement and payment thereunder extend beyond the current fiscal year, the OAG's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Florida Legislature.

ARTICLE 5. AUTHORIZED EXPENDITURES

Only expenditures which are detailed in the approved budget of the grant application, a revised budget, or an amended budget approved by the OAG are eligible for payment with grant funds. Reallocation of less than twenty percent (20%) of a single category amount to another category may occur with prior written approval of the OAG. Reallocation of twenty percent (20%) or more shall require a contract amendment pursuant to Article 16 of this Agreement. The OAG and Provider understand and agree funds must be used in accordance with the Victims of Crime Act, Victim Assistance Grant Final Program Guidelines, Federal Register, Vol. 62, No. 77, April 22, 1997, pp. 19607-19621, and the U.S. Department of Justice, Office of Justice Programs, Financial Guide.

The Provider and the OAG agree VOCA funds cannot be used as a revenue generating source and crime victims cannot be charged either directly or indirectly for services reimbursed with grant funds. Third party payers such as insurance companies, Victim Compensation, Medicare or Medicaid may not be billed for services provided by VOCA funded personnel to clients. Grant funds must be used to provide services to all crime victims, regardless of their financial resources or availability of insurance or third party payments.

The OAG and the Provider further agree that travel expenses reimbursed with grant funds will not exceed state rates pursuant to Section 112.061, F.S.; the Provider shall reimburse the OAG for all unauthorized expenditures; and the Provider shall not use grant funds for any expenditures made by the Provider prior to the execution of this Agreement or after the termination date of the Agreement.

If the Provider is a unit of local or state government, the Provider must follow the written purchasing procedures of the government agency. If the Provider is a non-profit organization, the Provider agrees to obtain a minimum of three (3) written quotes for all single item grant-related purchases equal to or in excess of one thousand dollars ($1,000) unless it can be documented that the vendor is a sole source supplier. The OAG may approve in writing an alternative purchasing procedure.

ARTICLE 6. PROGRAM INCOME

Providers must provide services to crime victims, at no charge, through the VOCA funded project. Upon request, the Provider agrees to provide the OAG with financial records and internal documentation regarding the collection and assessment of program income, including but not limited to victim compensation, insurance, restitution and direct client fees.

ARTICLE 7. METHOD OF PAYMENT

Payments under this Agreement shall be made on a cost reimbursement basis. Reimbursement shall be made monthly based on Provider submission and OAG approval of a monthly invoice, VOCA Personnel Spreadsheet (VPS), Match Personnel Spreadsheet (MPS), and actual expense report, if applicable. Monthly invoices, VPSs, MPSs and actual expense reports, must be submitted to the OAG by the last day of the month immediately following the month for which reimbursement is requested. The Provider shall maintain documentation of all costs represented on the invoice. The OAG may require documentation of expenditures prior to approval of the invoice, and may withhold payment if services are not satisfactorily completed or the documentation is not satisfactory. The final invoice is due to the OAG no later than 45 days after the expiration or termination of the Agreement. If the final invoice is not received within this time frame, all right to payment is forfeited, and the OAG may not honor any subsequent requests. Any payment due or any approval necessary under the terms of this Agreement may be withheld until all evaluation, financial and program reports due from the Provider, and necessary adjustments thereto, have been approved by the OAG.

The Provider agrees to maintain and timely file such progress, fiscal, inventory, and other reports as the OAG may require pertaining to this grant.

Payment for services shall be issued in accordance with the provisions of Section 215.422, F.S. Pursuant to Section 215.422(5), F.S., the Department of Financial Services has established a Vendor Ombudsman, which is to act as an advocate for vendors who may have problems obtaining timely payments from the state agencies. The Vendor Ombudsman may be reached at (850) 413-7269 or by calling the State Financial Services Hotline, 1-800-848-3792.

The Provider is required to Match the grant award as required in the Federal Guidelines. Match contributions of 20% (cash or in-kind) of the total cost of each VOCA project (VOCA grant plus match) must be reported. All funds designated as match are restricted to the same uses as the VOCA victim assistance funds and must be expended within the grant period. Unless otherwise approved by the OAG, match must be reported on a monthly basis consistent with the amount of funding requested for reimbursement.

ARTICLE 8. REPORTS

Quarterly reports as required by the OAG must be completed and received by the OAG no later than January 10, 2006; April 10, 2006; July 10, 2006; and October 10, 2006. Payment of a monthly invoice is contingent upon OAG receipt and approval of these reports.

ARTICLE 9. DOCUMENTATION AND RECORD RETENTION

The Provider shall maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of grant funds.

The Provider shall maintain a file for inspection by the OAG, or its designee, Chief Financial Officer, or Auditor General that contains written invoices for all fees, or other compensation for services and expenses, in detail sufficient for a proper pre-audit and post-audit. This includes the nature of the services performed or expenses incurred, the identity of the person(s) who performed the services or incurred the expenses, the daily time and attendance records and the amount of time expended in performing the services (including the day on which the services were performed), and if expenses were incurred, a detailed itemization of such expenses. Documentation, including audit working papers, shall be maintained at the office of the Provider for a period of five years from the termination date of the Agreement, or until the audit has been completed and any findings have been resolved, whichever is later.

The Provider shall give authorized representatives of the OAG the right to access, receive and examine all records, books, papers, case files, documents, goods and services related to the grant. If the Provider fails to provide access to such materials, the OAG may terminate this Agreement. Section 119.07, and Section 960.15 F.S., provide that certain records received by the OAG are exempt from public record requests, and any otherwise confidential record or report shall retain that status and will not be subject to public disclosure. The Provider, by signing this Agreement specifically authorizes the OAG to receive and review any record reasonably related to the purpose of the grant as authorized in the original grant application and or the amendments thereto. Failure to provide documentation as requested by the OAG shall result in the suspension of further payments to the Provider until requested documentation has been received, reviewed, and the costs are approved for payment by the OAG.

The Provider shall allow public access to all documents, papers, letters, or other materials made or received in conjunction with this Agreement, unless the records are exempt under one of the provisions mentioned in the paragraph above, or are exempt from s. 24 (a) of Article I of the State Constitution. Failure by the Provider to allow the afore mentioned public access may result in unilateral cancellation by the OAG at any time, with no recourse available to the Provider.

ARTICLE 10. VICTIM ADVOCATE DESIGNATION

The Provider agrees to have at least one staff member designated through the OAG's Victim Services Practitioner Designation Training.

ARTICLE 11. PROPERTY

The Provider agrees to be responsible for the proper care and custody of all grant property and agrees not to sell, transfer, encumber, or otherwise dispose of property acquired with grant funds without the written permission of the OAG. If the Provider is no longer a recipient, all property acquired by grant funds shall be subject to the provisions of the U.S. Department of Justice, Office of Justice Programs, Office of the Comptroller Financial Guide.

ARTICLE 12. AUDITS

The administration of funds awarded by the OAG to the Provider may be subject to audits and/or monitoring by the OAG, as described in this section.

This part is applicable if the Provider is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the Provider expends $300,000 ($500,000 for fiscal years ending after December 31, 2003) or more in Federal awards in its fiscal year, the Provider must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Article 4 to this Agreement indicates the amount of Federal funds awarded through the OAG by this Agreement. In determining the Federal awards expended in its fiscal year, the Provider shall consider all sources of Federal awards, including Federal resources received from the OAG. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Provider conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in this part, the Provider shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the Provider expends less than $300,000 ($500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Provider expends less than $300,000 ($500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal funds (i.e., the cost of such an audit must be paid from Provider resources obtained from other than Federal entities.)

ARTICLE 13. AUDIT REPORT SUBMISSION

1. Copies of audit reports for audits conducted in accordance with OMB Circular A-133, as revised, and required by this Agreement shall be submitted, when required by Section .320(d), OMB Circular A-133, as revised, by or on behalf of the Provider directly to each of the following:

   A. The Office of the Attorney General
   Bureau of Advocacy and Grants Management
   PL-01, The Capitol
   Tallahassee, Florida 32399-1050

B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320(d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

C. Other Federal agencies and pass-through entities in accordance with Sections .320(e) and (f), OMB Circular A-133, as revised.

2. In the event that a copy of the financial reporting package for an audit required by ARTICLE 12 of this Agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the OAG for the reasons pursuant to Section .320(e)(2), OMB Circular A-133, as revised, the Provider shall submit the required written notification pursuant to Section .320(e)(2) and a copy of the Provider's audited schedule of expenditures of Federal awards directly to the OAG.

3. Any reports, management letters, or other information required to be submitted to the OAG pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, as revised, as applicable.

4. Providers should indicate the date that the financial reporting package was delivered to the Provider in correspondence accompanying the financial reporting package.

ARTICLE 14. MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, monitoring procedures may include, but not be limited to, on-site visits by OAG staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Provider agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the OAG. The Provider further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

ARTICLE 15. TERMINATION OF AGREEMENT

This agreement may be terminated by the OAG for any reason upon five (5) days written notice via certified mail.

In the event this Agreement is terminated, all supplies, equipment and personal property purchased with grant funds shall be returned to the OAG. Any finished or unfinished documents, data, correspondence, reports and other products prepared by or for the Provider under this Agreement shall be made available to and for the exclusive use of the OAG.

Notwithstanding the above, the Provider shall not be relieved of liability to the OAG for damages sustained by the OAG by virtue of any termination or breach of this Agreement by the Provider. In the event this Agreement is terminated, the Provider shall be reimbursed for satisfactorily performed and documented services provided through the effective date of termination.

ARTICLE 16. AMENDMENTS

Except as provided under Article 5, Authorized Expenditures, modification of any provision of this contract must be mutually agreed upon by all parties, and requires a written amendment to this Agreement.

ARTICLE 17. NONDISCRIMINATION

No person, on the grounds of race, creed, color, national origin, age, sex or disability, shall be excluded from participation in; be denied proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement as proscribed by all applicable state and federal laws and regulations. The Provider shall, upon request, show proof of such nondiscrimination. Failure to comply with such state and federal laws will result in the termination of this Agreement.

ARTICLE 18. ACKNOWLEDGMENT

All publications, advertising or description of the sponsorship of the program shall state: "This project was supported by Award No, _____ awarded by the Office for Victims of Crime, Office of Justice Programs. Sponsored by (name of Provider) and the State of Florida."

ARTICLE 19. ASSURANCES

Attachment A "Assurances" is hereby incorporated by reference.

ARTICLE 20. AGREEMENT AS INCLUDING ENTIRE AGREEMENT

This instrument and the grant application embody the entire Agreement of the parties. There are no provisions, terms, conditions, or obligations other than those contained herein. This Agreement supersedes all previous communications, representations or Agreements on this same subject, verbal or written, between the parties.

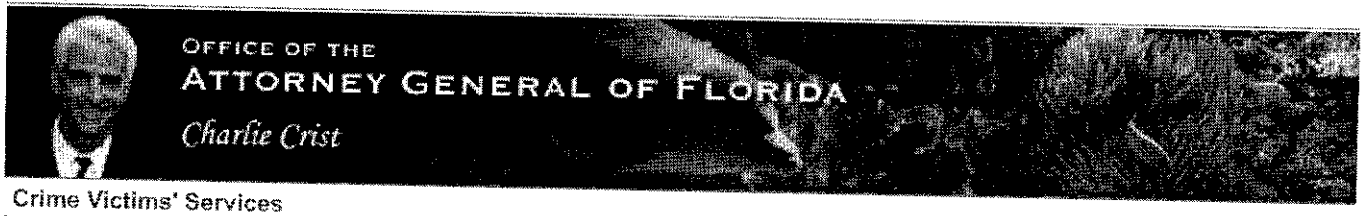
The Provider's signature below specifically acknowledges understanding of the fact that the privilege of obtaining a VOCA grant is not something this or any Provider is entitled to receive. There is absolutely no expectation or guarantee, implied or otherwise, the Provider will receive VOCA funding in the future. VOCA applications for grants are subject to a competitive process on an annual basis. The OAG strongly encourages the Provider to secure funding from other sources if the Provider anticipates the program will continue beyond the current grant year.

IN WITNESS WHEREOF, the OFFICE OF THE ATTORNEY GENERAL and the City of Miami Police Department have executed this Agreement.

	L. Clayton Roberts
Authorizing Official	**Executive Deputy Attorney General**
Mr. Joe Arriola, City Manager	9-19-05
Print Name	**Date**
Date	
FEL01906	
FID # of Provider	
N/A	
SAMAS Code	

ORIGINAL

May 08, 2006



Crime Victims' Services

Advocacy and VOCA Grants

The Bureau of Advocacy and Grants Management administers the federal Victims of Crime Act (VOCA) assistance grants. Through the United States Department of Justice, Office for Victims of Crime, these federal funds are awarded annually to the states to provide direct services to victims of crime. The Office of the Attorney General is the designated pass-through agency to administer the federal grant funds in Florida. Grants are then awarded to local community public and not for profit agencies for use in responding to the emotional and physical needs of crime victims, assisting victims by stabilizing their lives after a victimization, assisting victims to understand and participate in the criminal justice system, and providing victims with a measure of safety and security. Collections into the fund are generated from federal offenders.

Click here to access the 2006-2007 VOCA grant application.

Click here to access documents needed by subgrantee programs to comply with the 2005-2006 VOCA grant reimbursement requirements.

The bureau also administers the Address Confidentiality Program for victims of domestic violence and provides regional victim advocacy and appellate notification to victims of crime. As part of the outreach functions of the Office of the Attorney General, the bureau maintains a directory of victim service providers throughout the state which may be accessed at http://myfloridalegal.com/directory. Other areas of service to victims and victim assistance organizations include publication of a biennial Legislative Synopsis and maintenance of protocols for the initial forensic physical examination of adults and children who are sexually assaulted.

STATE OF FLORIDA

CHARLIE CRIST
ATTORNEY GENERAL

August 9, 2005

Mr. Joe Arriola
City Manager, City of Miami
3500 Pan American Drive
Miami, Florida 33133

Dear Mr. Arriola:

It is a pleasure to inform you that the City of Miami Police Department will be awarded a Victims of Crime Act (VOCA) grant in the amount of $35,450 for the 2005-2006 funding cycle. This grant is awarded as a recognition of your agency's commitment to provide services to crime victims in your community.

A member of my staff in the Bureau of Advocacy and Grants Management will contact you soon to assist you with the administrative requirements of this grant. Your continuing efforts to provide assistance to victims of crime are appreciated.

Sincerely,

Charlie Crist

CC/jlw

To: Maria Gonzalez
From: Ali E Paula

BUDGET

SECTION

A. Personnel – Provide a job description for all proposed VOCA-funded staff and indicate the percentage of time by each job duty. The job description must reflect VOCA allowable activities that are equal to or greater than the percentage of reimbursement requested from VOCA.

Position Requested	Total VOCA cost for 05/06	**This section is to be completed by OAG Staff**		
		% of VOCA allowable duties	# of pay periods	Pay Period Average
Victims Advocate Temporary P/T	$32,244.00			
Subtotal	**$32,244.00**	...	...	...

Indicate the pay schedule: (weekly) (**bi-weekly**) (bi-monthly) (monthly)

Budget: Complete the table below for each position requested (using additional pages if necessary).

Position VICTIMS ADVOCATE

Hours per week = 32 Annually = 1,664	Employer Cost		Hours per week = Annually =	Employer Cost
Gross	29,952.00		Gross	N/A
FICA (6.20)%	1,857.00		FICA ( )%	N/A
Retirement ( )%	N/A		Retirement ( )%	N/A
Health Ins. ( )%	N/A		Health Ins. ( )%	N/A
Life Ins. ( )%	N/A		Life Ins. ( )%	N/A
Dental Ins. ( )%	N/A		Dental Ins. ( )%	N/A
Workers Comp ( )%	N/A		Workers Comp ( )%	N/A
Unemployment ( )%	N/A		Unemployment ( )%	N/A
Other: Medicare (1.45) %	435.00		Other:	
TOTAL	32,244		TOTAL	

Position_____

Explanation (if applicable):.

According to City of Miami employment guidelines, Part Time temporary employees do not perceive any other benefit other than FICA and Medicare

B. Contractual Services - Contracts for specialized services.			
Name of Business or Contractor	Cost Per Unit of Service	Estimated Units of Service	Total
Subtotal	...	...	

C. Equipment – For furniture and equipment costing $1,000 or more. If awarded funds in this category, prior approval will be needed before purchasing items.			
Description	Number	Cost Per Item	Total
Desktop Computer and Software for Advocate	1	$3,206	$3,206
Subtotal	...	...	**$3,206**

Budget Narrative -

A Desktop Computers will increase the advocate's ability to reach and provide better services to crime victims in the office and at the crime site. The cost listed above is for a complete computer package which includes the computer, monitor, and software.

D. Operating Expenses – Office supplies such as paper, pencils, toner, printing, books, postage, transportation for victims; monthly service costs for telephone or utilities; staff travel (for other than training purposes and attending coalition meetings) etc. Furniture and equipment costing less than $1,000 should be requested from this budget category.

Description	Number	Cost Per Item	Total
Subtotal	...	...	

Budget Narrative –

Budget Summary By Category - Provide the subtotal for each budget category (A through D) for the Total VOCA Budget Request: Amounts must be rounded to the nearest whole dollar.	**TOTAL VOCA BUDGET REQUEST**
A. Personnel	$32,244
B. Contractual Services	$0
C. Equipment	$3,206
D. Operating Expenses	$0
TOTAL	**$35,450**

Part 10. Program Match

The Program match section is an itemized description by budget category of proposed matching contributions. The budget categories are personnel, contractual services, equipment and operating expenses. Provide a detailed (itemized) list and a budget narrative for each budgeted category. Indicate the funding source and indicate if it is a cash or in-kind match. Match is determined by dividing amount requested by four. Round all amounts to the nearest whole dollar (i.e., $457.45 would be $457 or $457.65 would be $458). Attach additional pages as necessary.

* Programs must ensure funding is not derived from Federal Dollars

Program Match Description	Funding Source	Cash or In-kind	Budget Category	Match Amount
Volunteers	Local	In Kind	Personnel	$221
Office Supplies	Local	Cash	Operating	$1,296
Utilities	Local	Cash	Operating	$1,800
Victim Advocate Supervisor	Local	Cash	Personnel	$5,546
			TOTAL	**$8,863**

Match Narrative –

Volunteers will assist the Victims Advocate to file and make photocopies in the office. Estimated rate of 1 hour per week at $5.25 per hour per 42 weeks = $221

The Department will provide office supplies (letterhead paper, envelops, copy paper, notification cards, cost of mailing, etc) at an estimated value of $108 per month = $1,296

MPD will towards 100% of the cost of utilities for the Unit. Utilities include 2 phone lines at $60/each per month, electricity at an estimated rate of $30 per month for a total of $1,800.

Approximately 10% of the Victim Advocate Supervisor position will be utilized to provide supervision for the victim advocate position and to the volunteers. The supervisor's total salary and benefits equal $55,458.

Position: Victims Advocate Supervisor

Hours per week = 40 Annually = 2080 $26.66 hr.	Employer Cost	Reported Match 10 %
Gross Salary	$42,775	$4,278
FICA (.0765) %	$3,272	$327
Retirement (10) %	$4,278	$428
Health Ins. (12) %	$5,133	$513
Other		
TOTAL	$55,458	$5,546

MIAMI POLICE DEPARTMENT

VICTIM'S ADVOCATE SUPERVISOR JOB DESCRIPTION

Responsible for coordinating and supervising other support personnel (grant funded, City or volunteer), which includes: (100%)

- Functioning as an advocate for victims of violent crimes; such as homicide, sex crimes, assaults, hit & run, DUI, robbery, and domestic violence. (5%)
- Familiar with the basic working knowledge of a police department.
- Have a solid working understanding of victim's advocacy procedures.
- Provide information on victim's rights as required by Florida State Statute (F.S. 960.001). (5%)
- Assist and treat victims or survivors of violent crimes with dignity, fairness and compassion. (25%)
- Provide contact for direct services to victims or survivors. (5%)
- Provide safety plans. (5%)
- Provide initial crisis intervention referrals to an existing counseling program or agency. (10%)
- Follow up with victims to ensure quality service and ascertain additional needs. (10%)
- Establish and maintain a comprehensive and succinct case management system that would include tracking and following up on cases from their inception through closure. (5%)
- Must be familiar with available community service agencies.
- Must be familiar with the State's Victims Compensation Program.
- Assign cases to victim advocate. (1%)
- Review advocates files on victims to ensure proper service and contact have been provided. (5%)
- Identify high-risk cases. (2%)
- Meet with advocates as needed to ensure cases are in compliance. (1%)
- Create and maintain a victim database. (10%)
- Create and maintain schedule for advocates. (5%)
- Review advocates daily work log. (1%)
- The Victim Advocate will train new Police Officers on victims' rights and will follow up with the rest of the Police Officer Staff in roll call training or by our Unit's monthly bulletin. (5%)

MIAMI POLICE DEPARTMENT

VICTIM'S ADVOCATE JOB DESCRIPTION

- Assist victims or survivors of violent crimes by providing initial crisis intervention referrals to the appropriate counseling programs or agencies. Note: The provision of mental health services is not allowed for the Miami Police Department, as we are not a bona-fide mental health agency; hence, services in this area are limited to agency referrals. (10%)
- Perform crisis intervention by visiting crime scenes, homes, hospitals, and funerals to provide assistance to primary and secondary victims (as needed). (20%)
- Provide immediate support assistance to victims by contacting family members, doctors, counselors, etc. (20%)
- Ensure that proper services are provided to victims and survivors. Services may include but are not limited to crisis intervention, facilitating compensation for victims, providing referrals to mental health agencies, etc. (5%)
- Notify victims of their legal rights. (1%)
- Follow up with victims to ensure the receipt of quality service and ascertain additional needs. (2%)
- Provide education to the victims concerning the State's Victims Compensation Program and the importance of participating in the criminal justice process. (3%)
- Assist victims with filing victim compensation forms. (10%)
- Provide victims with case information and follow-ups. (10%)
- Keep track of eligibility of victim for compensation. (5%)
- Maintain contact with analyst at the Attorney General Office in Tallahassee. (4%)
- Establish and maintain a detailed and concise case management, which includes a record of initial contact and follow-up contacts. (10%)
- Considerable knowledge of community services available.
- Considerable knowledge of the State's Victim Compensation Program.
- Ability to be on-call 24 hours per day, 7days per week.

LEXSEE

Stetson Law Review

Spring, 1997

26 Stetson L. Rev. 975

LENGTH: 2318 words

STETSON LAW REVIEW: ETHICS CODES

NAME: Marian Hyatt Kimberly M. Johnson

SUMMARY:
... James Barker, a city commissioner for the City of Coral Gables, accepted complimentary country club memberships at two Coral Gables social clubs. ... The court reasoned that the phrase "should know" required the public official to divine the subjective intent of the donors. ... The challenger must show: (1) a wrongful intent, and (2) a financial benefit that is traditionally inconsistent with the proper performance of public duties. ... An act is corrupt if it is done with wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for any benefit resulting from some act or omission. ... In examining the propriety of the dry-cleaning reimbursement, Judge Cope noted that there was no competent evidence demonstrating that Kinzer acted with wrongful intent or that he obtained some financial benefit inconsistent with the proper performance of his public duties. The request for reimbursement clearly and accurately identified the substance of the request, and the town manager approved the request using a "zone of reasonableness" test which he applied to every commissioner's reimbursement requests. ... This case appears to suggest that courts will look to the traditional treatment of expense reimbursement by the approving officials in determining the reasonableness of the request which may mean that each challenge will be examined pursuant to that particular municipality's procedures in approving such allotments. ...

TEXT:
[*975]

Commission on Ethics v. Barker

677 So. 2d 254 (Fla. 1996)

Section 112.313(4) of the Florida Statutes governing the ethical conduct of public officials survived a constitutional challenge when the recently amended statute was upheld as facially constitutional. The Florida Supreme Court concluded that the constructive knowledge component of the statute did not render the statutory section impermissibly vague.

James Barker, a city commissioner for the City of Coral Gables, accepted complimentary country club memberships at two Coral Gables social clubs. The state filed a complaint with the Florida Commission on Ethics [hereinafter the Commission] alleging that Barker's acceptance of these memberships violated § 112.313(4) which provides:

No public officer or employee of any agency or his spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer or employee 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 or employee was expected to participate in his official capacity.

Fla. Stat. § 112.313(4) (1995).

The Commission concluded that no reasonable person could believe that complimentary memberships were given for any reason other than to influence the official. However, the Third District Court of Appeal found the statute void for vagueness and reversed the Commission. The court reasoned that the phrase "should know" required the public official to divine the subjective intent of the donors. Because the standard turns on a subjective mental process implicit in the constructive knowledge requirement as to the intent of third persons, the court concluded that the statute was unconstitutionally vague.

On appeal by the city commissioner, Justice Grimes rejected the lower court's reasoning and upheld the constructive knowledge element of the statute. The Third District Court of Appeal previously rejected a vagueness challenge to a criminal statute with a similar constructive knowledge element. In that case, the court concluded that statutes containing constructive knowledge elements [*976] are constitutionally sound because reasonable persons have adequate notice of the types of conduct proscribed. See *State v. Dickinson, 370 So. 2d 762, 762-63 (Fla. 1979).* Because criminal statutes are subject to more stringent constitutional examination than civil statutes, civil statute § 112.313(4) is certainly constitutionally sound.

Justice Anstead dissented, arguing that the "should know" standard was a restatement of the reasonable man standard struck down as unconstitutionally vague in a prior version of the statute. He reasoned that the standard was impermissibly vague because it was based on the subjective view of the hearing officers, as to both the subjective view of the public official and the donor.

Kinzer v. State Commission on Ethics

654 So. 2d 1007 (Fla. 3d Dist. Ct. App. 1995)

Municipalities with a population of less than 35,000 were exempted from the anti-nepotism law by a 1994 amendment to *Florida Statutes § 112.3135(2)(a) (1993)*, yet elected officials in such communities are subject to a code of ethics guiding conduct in public office where one's expenditures are scrutinized for impropriety. The challenger must show: (1) a wrongful intent, and (2) a financial benefit that is traditionally inconsistent with the proper performance of public duties.

LEGAL BACKGROUND

The anti-nepotism statute is codified in part III of § 112 of the Florida Statutes. It is entitled "Code of Ethics for Public Officers and Employees" and is comprised of § § 112.311 through 112.326. The legislative intent and declaration of policy set forth in § 112.311 states:

(1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

. . . .

(4) It is the intent of this act to implement these objectives of [*977] protecting the integrity of government and of facilitating the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service.

(5) . . . . To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provision of this part.

(6) . . . . Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.

Fla. Stat. § 112.311 (1995) (emphasis added).

It is apparent that the primary concern of these statements, that the legislative intent, and that the purpose lies in avoiding conflicts of interest by public officials, and in eliminating direct or indirect private gain by financial compensation or otherwise in the carrying out official duties. The code of ethics mentioned in § 112.311(5) refers to both the implementation of policy and intent recited in subparagraphs (1) through (4) and to the standards of conduct set forth in § 112.313. See *Blackburn v. Comm'n on Ethics, 589 So. 2d 431 (Fla. 1st Dist. Ct. App. 1991).*

The anti-nepotism law is a civil statute of a penal nature. See *City of Miami Beach v. Galbut, 626 So. 2d 192, 194 (Fla. 1993).* Under this statute, civil penalties are imposed for violations of the statute provisions. See *Kinzer v. State Comm'n on Ethics, 654 So. 2d 1007, 1008 (Fla. 3d Dist Ct. App. 1995).*

Subsection 112.313(6) provides:

(6) MISUSE OF PUBLIC POSITION.--No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others.

[*978]

Fla. Stat. § 112.313(6) (1995).

This subsection has been used to challenge such actions as the use of city stationery to promote private symposiums for which compensation was received, see *Gordon v. State Comm'n on Ethics, 609 So. 2d 125 (Fla. 4th Dist. Ct. App. 1992),* or the use of subordinate county employees to compile information and write articles used in private election campaigns, see *Blackburn, 589 So. 2d at 431,* or wrongful or corrupt financial gain, see *Gordon, 609 So. 2d at 125.* The statute focuses on the corruptness of the action. An act is corrupt if it is done with wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for any benefit resulting from some act or omission. A second part of the test is whether the act is inconsistent with the proper performance of one's duties. See *Kinzer, 654 So. 2d at 1007.* Local governments possess the authority to allocate or spend funds so long as the action or expenditure promotes the public health, safety, morality, or general welfare of that municipality's citizens somewhat or more substantially than it does other residents of the state. See David J. McCarthy, Local Government Law 354-55 (1990).

THIS CASE

Mitchell Kinzer, a member of the Surfside Town Commission which was a community of 4000 within the greater Miami-Dade County region, voted for his wife to be appointed to an unpaid advisory board after the town attorney advised him of his legal duty to vote under *§ 286.012 of the Florida Statutes.* Subsequently, Kinzer was brought before the Ethics Committee for violations of the antinepotism law, Misuse of Public Position, *Florida Statutes § 112.313(6) (1993)*, for voting for his wife and additionally was charged with improperly seeking reimbursement for expenditures (eight expenditures were challenged; however, the Ethics Committee only found one, an eleven dollar and twenty-five cent dry-cleaning bill incurred as a result of attending a function for the town, to be improper).

The committee found Kinzer in violation of the anti-nepotism law, and Kinzer appealed. While the appeal was pending, the Florida Legislature amended the statute clearly establishing an exception for municipalities with populations less than 35,000 people. As Surfside had a population of only 4000, it qualified under this exception. Judge Cope held that the amendment worked as a partial repeal of the law as applied to

municipalities of less than 35,000. Kinzer was exonerated in effect because the statute did not have [*979] any saving clause as to past violations.

Judge Cope then examined the challenges to Kinzer's expenditures, holding that violation of § 112.313(6) required the act to be done both (1) "corruptly" (with wrongful intent, *Fla. Stat. § 112.312(7)(1995)*) and (2) "inconsistent with the proper performance of [the public servant's] public duties." *Blackburn, 589 So. 2d at 436.* It was town policy, based on a resolution, that, because one dollar per year was the limit of compensation for serving as a commissioner, expenses and registration for attending governmental and civic functions in one's representative capacity would be reimbursed up to one thousand dollars annually.

Surfside's procedure for reimbursement consisted of making a request to the town manager for approval. There were no written guidelines governing which expenditures were reimbursable, and thus, reimbursements were handled on a case-by-case basis. The town manager had traditionally taken an expansive view of what constituted a reasonable expense for commissioners, rarely questioning their submissions. This was probably due, at least in part, to the nominal salaries. The manager testified, "there is a vast gray area where reasonable people can differ and I just got tired of debates about it, and I felt I would let each commissioner use his own judgment unless there was something clearly out of line." *Kinzer, 654 So. 2d at 1009.*

In examining the propriety of the dry-cleaning reimbursement, Judge Cope noted that there was no competent evidence demonstrating that Kinzer acted with wrongful intent or that he obtained some financial benefit inconsistent with the proper performance of his public duties. The request for reimbursement clearly and accurately identified the substance of the request, and the town manager approved the request using a "zone of reasonableness" test which he applied to every commissioner's reimbursement requests. Although this test was not pursuant to any written policy and may be more relaxed than the "public health, safety, morality, or general welfare" test governing public expenditures, the town had adopted and promulgated this relaxed implementation of the commission's resolution allowing for reimbursement. As a result, Kinzer's actions were not outside the procedural boundaries established and implemented by the town. As the town's procedures were followed, it would have been difficult for the commissioner or anyone else to have known that the conduct crossed the line of prohibited conduct. See *Blackburn, 589 So. 2d at 431* (inferring a notice requirement into the test to determine corruption). [*980]

COMMENT

This case appears to suggest that courts will look to the traditional treatment of expense reimbursement by the approving officials in determining the reasonableness of the request which may mean that each challenge will be examined pursuant to that particular municipality's procedures in approving such allotments. However, it should be realized that equitable principles clearly played a part in this decision, in light of the facts that formalities and standards for expense approval were lacking, that the commissioners received such a nominal salary, and especially considering the circumstances surrounding the request for the dry-cleaning funds (where the suits were soiled at public functions while Kinzer was fulfilling his official duties). For these reasons, adherence to "traditional inconsistency" as a standard for determining reasonableness should not be blindly followed.