INQ 00-20

Meyers, Robert (COE)

Subject: Mayor Diaz' inquiry

I spoke to Mayor Diaz from Sweetwater (October 24, 25) and he wanted to know whether he could fly on a corporate jet to Tallahassee with a three others to ask the state to waive its cut of the FEMA money that the city is going to receive as a result of the recent flooding. He indicated the firm that is providing the transportation was involved in the clean-up after the flood. I advised him I needed to speak to our staff general counsel and she stated that under state law there would be no legal conflict, provided he discloses the value of the gift. I advised him of this fact, however, further stated that I was concerned about the appearance question and whether it would not be more prudent to fly commercially. He felt this should not be an additional expense (cost of flights to Tallahassee) that the city could afford to incur. I asked him if he had discussed this matter with his city attorney and he advised me he had not, he stated the attorney was unavailable. He did mention, however, that the company had taken him on a helicopter ride to tour the damaged areas in the city and the city attorney had approved this.

CEO 90-72--October 23, 1990

GIFT DISCLOSURE

APPLICABILITY OF GIFT DISCLOSURE LAW

TO TRIPS PROVIDED TO AN ELECTED OFFICIAL

To: The Honorable Tom C. Brown, State Senator, District 10 (Daytona Beach)

SUMMARY:

An elected public officer is required by Section 112.3148, Florida Statutes, to disclose the gift of a trip paid for by others in whole or in part and related to his public service, the value of which exceeds $100, unless paid for by his or another governmental agency. Any trip received by the officer that is related to his public service and is paid for in whole or in part by a person or entity other than a governmental agency, the value of which exceeds $100, should be disclosed, regardless of whether the officer has provided any services as a quid pro quo for the trip.

QUESTION:

Are you, a State Senator, required to disclose the gift of a trip paid for by others in whole or in part, the value of which exceeds $100?

Your question is answered in the affirmative, subject to the exceptions noted below.

The Code of Ethics for Public Officers and Employees contains two types of provisions concerning gifts to public officials--prohibitions against accepting gifts under certain circumstances and disclosure requirements for those gifts that can be accepted. The prohibitions appear in Section 112.313(2), Florida Statutes, which prohibits the solicitation or acceptance of anything of value based upon any understanding that the official action of the public officer would be influenced, and in Section 112.313 (4), Florida Statutes, which prohibits the acceptance of any compensation, payment, or thing of value when the official knows, or with the exercise of reasonable care should know, that it was given to influence an official action in which he was expected to participate. In addition, it appears that Section 112.313(6),Florida Statutes, which prohibits the corrupt use of official position to secure a special benefit for oneself or another, would prohibit the use of an official's public position to solicit gifts for the official. As your question concerns disclosure only, however, we will assume that none of these prohibitions would be applicable.

Gift disclosure by elected public officers and certain appointed officers is governed by the following provision:

Each elected public officer and each appointed public officer who is required by law, pursuant to s. 8, Art. II of the State Constitution, to file a full and public disclosure of his financial interests shall file a statement containing a list of all contributions received by him or on his behalf, if any, and expenditures from, or disposition made of, such contributions by such officer which are not otherwise required to be reported by chapter 106, with the names and addresses of persons making such contributions or receiving payment or distribution from such contributions and the dates thereof. The statement shall be sworn to by the elected public officer as being a true, accurate, and total listing of all of such contributions and expenditures. [Section 112.3148(2)(a), Florida Statutes.]

For purposes of this disclosure requirement, the term "contribution" is defined as follows:

'Contribution' means any gift, donation, or payment of money the value of which is in excess of $100 to any public officer or to any other person on the public officer's behalf. Any payment in excess of $100 to a dinner, barbecue, fish fry, or other such event shall likewise be deemed a 'contribution.' However, a gift representing an expression of sympathy and having no material benefit or a bona fide gift to the officeholder by a relative within the third degree of consanguinity for the personal use of the officeholder shall not be deemed a 'contribution.' This section does not apply to complimentary parking privileges bestowed upon a legislator by an airport authority, or to honorary memberships in social, service, or fraternal organizations presented to an elected public officer merely as a courtesy by such organizations. [Section 112.3148(1)(c), Florida Statutes.]

Until 1989 these disclosure requirements had been adopted by the Legislature as Section 111.011, Florida Statutes. Therefore, in order to answer your inquiry it is appropriate to review the history and interpretations of the gift disclosure laws applicable to elected officials.

In 1975, the Legislature adopted the limited financial disclosure law that appears in Section 112.3145, Florida Statutes. Section 112.3145(3)(d) required officials subject to the law, including all State and local elected officers, to list all persons, business entities, or other organizations from whom they received a gift or gifts from one source, the total of which exceeded $100 in value during the disclosure period (the previous calendar year). "Gifts disclosed pursuant to s. 111.011" were not required to be listed.

At that time, Section 111.011, Florida Statutes, required elected officials semi-annually to file a sworn statement listing all "contributions" received by them or on their behalf, with the names and addresses of persons making such contributions and the dates thereof. The term "contribution" was defined in that section to mean "any gift, donation, or payment of money the value of which is in excess of $25 to any elected public officer or to any other person on his behalf." The statute provided that it was to be liberally construed so as to require full financial disclosure of all receipts of contributions received by public officers during their terms of office and that it was cumulative to the other provisions of Part III of Chapter 112. Knowing and willful failure to comply with the disclosure law was made a second degree misdemeanor.

In 1976, reporting under Section 111.011 was changed to an annual basis. Also in 1976, the Legislature amended the Code of Ethics in Chapter 112 to define the term "gift" restrictively, to include only real property or tangible or intangible personal property. As so amended, the limited

disclosure law in Chapter 112 clearly was intended not to require the reporting of services provided to officials gratuitously. We subsequently recognized this in our opinions CEO 78-40 (free legal representation not a "gift"), CEO 78-41 (transportation to football games by private plane not a "gift"), and CEO 85-50 (ground transportation not a "gift," although meals and tangible mementoes would constitute gifts).

The following year, 1977, the Sunshine Amendment (Article II, Section 8, Florida Constitution) went into effect, requiring elected constitutional officers to file full and public financial disclosure. However, that constitutional provision did not include any requirements for gift disclosure.

Until 1982, officials who filed full financial disclosure under the Sunshine Amendment also were required to file the limited statement of financial interests under Section 112.3145. In that year, Section 112.3144 was added in order to eliminate the filing of two different financial disclosure statements. As a result, elected constitutional officers who filed full disclosure were no longer required to file the limited disclosure statement; their only gift disclosure was that required by Section 111.011.

In 1983 the gift disclosure requirement of Section 112.3145, no longer applicable to elected constitutional officers, was amended to exempt "gifts required to be disclosed pursuant to s. 111.011." In 1988, the $25 reporting threshold under Section 111.011 was increased to $100, matching the reporting threshold for persons required to file the limited disclosure statement.

Effective July 6, 1989, the Legislature repealed Section 111.011, adopting in its stead Section 112.3148, Florida Statutes. See Chapter 89-380, Laws of Florida. Section 112.3148 uses language identical to that of Section 111.011 in requiring elected officials to file a sworn statement listing all "contributions" received by them or on their behalf, with the names and addresses of persons making such contributions and the dates thereof. The term "contribution" also is defined identically. The new section still provides that it is to be liberally construed so as to require full financial disclosure of all receipts of contributions received by public officers during their terms of office and that it is cumulative to the other provisions of Part III of Chapter 112. See Section 112.3148(4), Florida Statutes.

There are three significant changes between the language of Section 111.011 and the language of Section 112.3148, none of which are relevant to your inquiry. First, the number of public officers required to file under the law was increased, by requiring persons elected to district offices to file and by requiring appointed officers subject to filing full and public disclosure to file the gift disclosure statement. See Section 112.3148(1)(a) and (2)(a), Florida Statutes. Secondly, the second degree misdemeanor penalty was deleted, making a violation of the new section punishable in the same manner as any other violation of the Code of Ethics. See former Section 111.011(4), Florida Statutes. Thirdly, persons who give contributions to elected public officers were required to provide the officer with informational statements about those contributions by February 28th following the year in which the contribution was given. See Section 112.3148(3), Florida Statutes.

As there do not appear to have been any judicial decisions construing former Section 111.011, the only precedent is a series of opinions of the Attorney General. In AGO 74-167 the Attorney General advised that gratuitous hotel accommodations, meals, and transportation had to be reported when their value exceeded $25, stating:

In view of the apparent purpose of the statute--to compel disclosure of all gifts and donations which

might tend to influence an elected public officer--I have no doubt that it includes all gifts and donations of a value in excess of twenty-five dollars, irrespective of their form, including such items as hotel or room accommodations, meals, and transportation furnished gratuitously to an elected public officer.

However, the Attorney General's opinion notes, when accommodations, meals, or transportation were furnished to an official who had been invited to appear and speak before an audience, those types of expenditures were not reportable because they are not considered to be gratuitous. (In AGO 73-386 the Attorney General had advised that payments to public officials for speech honoraria, being a quid pro quo instead of a gratuitous payment, did not have to be reported.)

In AGO 75-82, the Attorney General advised that the reasonable value of office space and utilities provided gratuitously to a legislator for use as a district legislative office should be reported as a contribution. Although noting the argument that such contributions ultimately would inure to the benefit of the State, because a legislator's expenses for office space and utilities would be reimbursable by the State, the Attorney General replied that "such is the case with many lodging and transportation services furnished gratuitously to elected public officials." Subsequently, AGO 75-121 advised that office space furnished to a legislator by a county under the authority of a special act did not have to be reported as a "contribution," on the ground that the purpose of the disclosure law--to compel disclosure of all gifts and donations which might tend to influence an elected public officer--would not be served by disclosure.

AGO 75-151 advised that where hunting privileges and the right to build and use a hunting camp on the land of another are provided gratuitously to an elected public officer, such privileges and use of land should be reported as a contribution. In reaching that decision, the Attorney General emphasized the apparent purpose of the statute and his earlier conclusion that all gifts and donations of a value exceeding $25 should be reported, irrespective of their form.

As construed for 14 years by the Attorney General, the gift disclosure law required the reporting of trips provided to an elected public officer, including accommodations, meals, and transportation, when their value exceeded the statutory threshold. The identical operative language was transferred to Section 112.3148. We acknowledge that the term "gift" is defined restrictively in Section 112.312(9), Florida Statutes. However, the law requires the disclosure of "any gift, donation, or payment of money . . . to any public officer or to any other person on the public officer's behalf," not merely the disclosure of any "gift." "Donation" has been defined as "1. The act of giving something to a fund or cause. 2. A gift or grant; contribution." [The American Heritage Dictionary, 2d College Ed. (1985).] As it is commonly understood that services may be donated to a fund or cause, it appears that a trip, paid for by another, would constitute a "donation." In addition, "contributions" to be disclosed include payments to any other person on the public officer's behalf. Where a trip is provided to a public officer, the entity providing the trip will be making payments to others for lodging, meals, and transportation in behalf of the officer.

Our research of the legislative history of Chapter 89-380 (CS/SB 132, 140, and 150) has disclosed no evidence of any intent on the part of the Legislature to restrict the interpretation or applicability of the law at the time of its transfer. Moreover, the present law continues to expressly state:

This section shall be liberally construed so as to require full financial disclosure of all receipts and expenditures by public officers of contributions received by them during their terms of office. This section is cumulative to other provisions of this part. [Section 112.3148(4), Florida Statutes.]

Particularly in light of this statement of legislative intent, we see no reason to conclude that the present gift disclosure law should be interpreted more restrictively than its predecessor.

As noted above, AGO 75-121 advised that office space furnished to a legislator by a county under the authority of a special act did not have to be reported as a "contribution," on the ground that the purpose of the disclosure law--to compel disclosure of all gifts and donations which might tend to influence an elected public officer--would not be served by disclosure. We are of the opinion that trips paid for by a governmental agency, whether the public officer's agency or another, need not be reported. In addition, given that the purpose of this law is to compel disclosure of contributions that might tend to influence an official, we conclude that trips that are not related to the official's public service also need not be reported.

By "related to the official's public service," we do not mean to exclude, for example, trips paid for by a lobbyist during which no legislative business is discussed. Rather, we believe that the emphasis of the law is on requiring the disclosure of trips that are provided to an official because of his public service. A trip paid for by a person who has or anticipates having business before the official's agency should be disclosed, as such a trip would be related to his public service in the sense of having been provided to him because of his public service. To the extent that the same trips were not paid for by the lobbyist before the official took office, such a trip would be related to the official's public service. On the other hand, trips paid for by the official's private employer solely in connection with the duties of his private employment or trips paid for by a personal friend who has no conceivable business before the official's agency would not be reportable, as they would not be related to the official's public service.

In our view, the disclosure of trips provided to an official, with the exceptions described above, eliminates the problems inherent in having to weigh the comparative values of any quid pro quo that may have been given by the official. Further, the disclosure of these trips serves the purpose of the disclosure law by allowing the people to evaluate the nature and extent of trips which might tend to influence their public officials.

Accordingly, we find that, as an elected public officer, you are required to disclose each trip that is paid for by others in whole or in part and is related to your public service, the value of which exceeds $100, unless the trip is paid for by a governmental agency.

CEO 90-73--October 23, 1990

GIFT DISCLOSURE

APPLICABILITY OF GIFT DISCLOSURE LAW

TO TRIPS OF AN ELECTED OFFICIAL

To: The Honorable Norman Ostrau, State Representative, District 96 (Plantation)

SUMMARY:

An elected public officer is required by Section 112.3148, Florida Statutes, to disclose any trip valued at over $100 that is paid for in whole or in part by another if the trip is related to his public service, unless the trip is paid for by his or another governmental agency. Therefore, a trip taken by the official that serves a public purpose should be reported if the expenses for the trip are paid by a private entity; if paid for by the official's agency or by another governmental entity, the trip need not be reported. Where the official takes a trip at the expense of another but with the agreement that he later will make reimbursement for the full cost of the trip, the trip should be reported if its value is over $100, it is paid for by a private entity, and it is related to his public service. The statute also requires the official to disclose the share of his expenses on a trip paid by another where he and the other person have agreed to split the cost of the trip in approximately equal portions, with each paying for different costs incurred by both as part of the trip, if the expenses of the trip paid by the other person on the official's behalf exceed the $100 threshold and if they are related to his public service. However, for example, if the official is taking the trip with a personal friend who has no conceivable business before the official's agency, the portion of his expenses paid for by his friend would not be reportable, as they would not be related to his public service.

QUESTION 1:

Are you, a State Representative, required under Section 112.3148, Florida Statutes, to disclose a trip, the value of which exceeds $100, where there is a public purposeserved by your going on the trip and where the expenses of the trip are paid by the Legislature, by another governmental entity, or by a private entity?

The Code of Ethics for Public Officers and Employees contains two types of provisions concerning

gifts to public officials--prohibitions against accepting gifts under certain circumstances and disclosure requirements for those gifts that can be accepted. The prohibitions appear in Section 112.313(2), Florida Statutes, which prohibits the solicitation or acceptance of anything of value based upon any understanding that the official action of the public officer would be influenced, and in Section 112.313 (4), Florida Statutes, which prohibits the acceptance of any compensation, payment, or thing of value when the official knows, or with the exercise of reasonable care should know, that it was given to influence an official action in which he was expected to participate. In addition, it appears that Section 112.313(6), Florida Statutes, which prohibits the corrupt use of official position to secure a special benefit for oneself or another, would prohibit the use of an official's public position to solicit gifts for the official. As your questions concern disclosure only, however, we will assume that none of these prohibitions would be applicable.

Gift disclosure by elected public officers and certain appointed officers is governed by the following provision:

Each elected public officer and each appointed public officer who is required by law, pursuant to s. 8, Art. II of the State Constitution, to file a full and public disclosure of his financial interests shall file a statement containing a list of all contributions received by him or on his behalf, if any, and expenditures from, or disposition made of, such contributions by such officer which are not otherwise required to be reported by chapter 106, with the names and addresses of persons making such contributions or receiving payment or distribution from such contributions and the dates thereof. The statement shall be sworn to by the elected public officer as being a true, accurate, and total listing of all of such contributions and expenditures. [Section 112.3148(2)(a), Florida Statutes.]

For purposes of this disclosure requirement, the term "contribution" is defined as follows:

'Contribution' means any gift, donation, or payment of money the value of which is in excess of $100 to any public officer or to any other person on the public officer's behalf. Any payment in excess of $100 to a dinner, barbecue, fish fry, or other such event shall likewise be deemed a 'contribution.' However, a gift representing an expression of sympathy and having no material benefit or a bona fide gift to the officeholder by a relative within the third degree of consanguinity for the personal use of the officeholder shall not be deemed a 'contribution.' This section does not apply to complimentary parking privileges bestowed upon a legislator by an airport authority, or to honorary memberships in social, service, or fraternal organizations presented to an elected public officer merely as a courtesy by such organizations.

In another opinion adopted this day, we have concluded that any trip, the value of which exceeds $100, that is paid for in whole or in part by another and that is related to an official's public service must be disclosed unless the trip is paid for by the official's or another governmental agency. Therefore, any trip which you have taken or will take that is paid by the Legislature or by another governmental entity need not be disclosed. With respect to trips that are paid for by a private entity, the most significant question is not whether there is a public purpose served by your going on the trip, but rather is whether the trip is related to your public service.

By "related to your public service," we explained in the other opinion, we do not mean to exclude, for example, trips paid for by a lobbyist during which no legislative business is discussed. Rather, we indicated, the emphasis of the law is on requiring the disclosure of trips that are provided to an official because of his public service. Therefore, a trip paid for by a person who has or anticipates having business before the Legislature should be disclosed, as such a trip would be related to your public

service in the sense of having been provided to you because of your public service. To the extent that the same trips were not paid for by the lobbyist before you took office, such a trip would be related to your public service. On the other hand, trips paid for by your private employer solely in connection with the duties of your private employment or trips paid for by a personal friend who has no conceivable business before the Legislature would not be reportable, as they would not be related to your public service.

As this question addresses trips you may take for which a public purpose would be served by your going on the trip, it appears that such trips would be related to your public service and therefore should be reported if paid for by a private entity; if paid for by the Legislature or by another governmental entity, the trip need not be reported. Your question is answered accordingly.

QUESTION 2:

Are you required under Section 112.3148, Florida Statutes, to make any disclosure where you reimburse the provider of a trip for the cost of the trip at a later date?

In your letter of inquiry you question whether and to what extent disclosure should be made if you reimburse the provider of a trip at a later date. Particularly, you ask whether the use of the provider's money interest free for the period of time until reimbursement is made should be considered a gift and, if so, how should such a gift be valued? You also inquire about what would be considered a reasonable time for reimbursement.

Having concluded that for purposes of Section 112.3148 any trip paid for by a governmental entity need not be disclosed, we find that if you take a trip that is paid for by a governmental agency you need not report the trip, regardless of whether you reimburse the agency for your expenses. If the trip is paid for by a private entity and is related to your public service, as described in our response to your first question, the trip should be reported, even if you make reimbursement for the full cost of the trip. If the trip is not related to your public service, it need not be reported.

In the past, we have advised that nothing in the disclosure laws prohibits a public official from adding an explanatory note on the disclosure form in order to assure that the information reported is complete, accurate, and not misleading. Section 112.3148(2)(a) requires the disclosure of expenditures from or the disposition made of contributions received by the public officer, including the names and addresses of persons receiving payment or distribution from such contributions and the dates thereof. Although the terms of this disclosure requirement would not be applicable to reimbursement of the cost of a trip (unless reimbursement were made out of funds received as a "contribution" under the statute), we are of the opinion that it would be entirely appropriate to note on the disclosure form the fact that you had reimbursed the provider of the trip for its cost and the date of reimbursement.

Accordingly, we find that where you take a trip at the expense of another, even with the agreement that you will make reimbursement for the full cost of the trip, the trip should be reported if it is related to your public service and if it is not paid for by a governmental entity.

QUESTION 3:

Are you required under Section 112.3148, Florida Statutes, to disclose the share of your expenses on a trip paid by another where you and the other person have agreed to split the cost of the trip in approximately equal portions, with each paying for different costs incurred by both as part of the trip?

You further question whether and to what extent disclosure should be made if you go on a trip with another person and the cost of the trip is split, with each paying approximately an equal portion. You provide as an example a situation where you go on a hunting trip with another individual with each of you paying your own air fare, but you pay for the rental car and lodging while the other person pays for meals, the cost of hunting licenses, ammunition, etc., so that each of you pays approximately an equal portion of the trip. Under these circumstances, you ask whether you must report as a gift your share of those expenses paid by the other person.

Again, as we have concluded that for purposes of Section 112.3148 any trip paid for by a private person or entity and related to your public service should be disclosed and that any quid pro quo you may provide for the trip is irrelevant to the disclosure issue, it follows that expenses of the trip paid by the other person on your behalf should be reported if they exceed the $100 threshold and if they are related to your public service. As explained in our response to your first question, if you are taking the trip with a personal friend who has no conceivable business before the Legislature, the portion of your expenses paid for by your friend would not be reportable, as they would not be related to your public service. As we advised with respect to your second question, we are of the opinion that if the trip is reportable it would be entirely appropriate to note on the disclosure form the fact that you had paid an equal share of the expenses of the trip for the other person while on the trip.

Accordingly, we find that you are required under Section 112.3148, Florida Statutes, to disclose the share of your expenses on a trip paid by another where you and the other person have agreed to split the cost of the trip in approximately equal portions, with each paying for different costs incurred by both as part of the trip, only if the expenses paid for by the other person are related to your public service and exceed $100. Otherwise, the expenses need not be disclosed.