



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FLORIDA

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MEMORANDUM

TO: *Kris Garrison, Planning Director*

CC: *Joseph Moore, Chief Operating Officer*
Blair Littlejohn, Esq., Senior Counsel

FROM: *Gerald A. Williams, Chief Counsel to the School Board*

DATE: *November 21, 2005*

RE: *Your Questions About Potential Outside Activities of Planning Employees*

Thank you for your recent questions (arising from the City of Jacksonville's request for a District representative to speak to its city council about our interlocal agreement for school concurrency) regarding: a) whether, when a Planning employee spends time giving a presentation to another government entity, the District may charge the other government entity for the District employee's time (salary and benefits, etc.), in addition to the usual travel, lodging, and meals; or b) whether a Planning Department employee may, outside of District work hours, privately perform outside consulting/advisor services regarding concurrency and school planning.

In sum, it appears that the School Board could enter into an employee-sharing agreement under FLA. STAT. § 112.24 to provide a District employee to the City and seek reimbursement from the City for the salary, benefits, and travel expenses of the District employee. Alternatively, similar arrangements could be made through an interlocal agreement under FLA. STAT. § 163.01. Additionally, it appears that a District employee could privately perform consulting services for other governmental agencies, outside of District work hours, as long as certain restrictions and conditions are met.

A. *May the District charge for an employee's time (salary and benefits, etc.) in addition to the usual travel expenses, when a Planning employee travels to give a presentation to another governmental entity in the state?*

1. Employee Sharing Agreement under FLA. STAT. § 112.24. The Legislature enacted FLA. STAT. § 112.24 ("Intergovernmental Interchange of Public Employees") to "encourage economical and effective utilization of public employees in this state [through] the temporary assignment

of employees among agencies of government, both state and local, and including school districts." Under this statute, "municipalities . . . and political subdivisions are authorized to enter into employee interchange agreements with [an] other . . . municipality, or a political subdivision including a school district. . . ." FLA. STAT. § 112.24.

Of the options allowed by the statute, the most appropriate arrangement would be where the District employee would be considered "on detail to regular work assignments of [the District]" while serving the City (and would continue to receive the regular District salary and benefits during that time.) *Id.* § 112.24(3)(a)1. The employee would "remain the employee of the [District] for all purposes except that supervision during the period of detail may be governed by the interchange agreement." *Id.* § 112.24(3)(a)1. Such work details may be made with or "without reimbursement by the [City] for the travel and transportation expenses to or from the place of the assignment or for the pay and benefits, or a part thereof, of the employee during the assignment." *See id.* § 112.24(3)(b).

The City "may, in accordance with the travel regulations of [the City], pay travel expenses of persons assigned thereto during the period of such assignments on the same basis as if they were regular employees of the receiving party." *Id.* § 112.24(4)(f). Conversely, the District "may, in accordance with the travel regulations of [the Board], pay the travel expenses of an employee who is assigned to [the City] on . . . detail . . . , but shall not pay the travel expenses of such an employee incurred in connection with work assignments at the receiving party. . . . If the period of assignment is 3 months or less, the [District] may pay a per diem allowance to the employee on assignment or detail." *Id.* § 112.24(3)(e).

In sum, arrangements for reimbursement of the employee's salary, benefits, and travel could be determined by an agreement between the Board and the City. "Details of an employee interchange program shall be the subject of an agreement . . . between a sending party [e.g. the School Board] and a receiving party [e.g. the municipality]." *Id.* § 112.24(1).

2. Interlocal Agreement under FLA. STAT. § 163.01. Another possible vehicle for arranging for the City's temporary use of (and reimbursement for) a District employee would be an interlocal agreement under FLA. STAT. § 163.01, the "Florida Interlocal Cooperation Act of 1969." The purpose of such agreements is to "permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services . . . in a manner . . . that will accord best with . . . the needs and development of local communities." *Id.* § 163.01(2).

Such interlocal agreement between the School Board and the City would specify how the parties would "provide from their treasuries the financial support for the purpose set forth in the interlocal agreement [and] payments of public funds that may be made to defray the cost of such purpose. . . ." *Id.* § 163.01(5)(d). Additionally, the agreement could provide for "the personnel, equipment, or property of one or more of the parties . . . [to] be used in lieu of other contributions or advances," *id.* § 163.01(5)(d), and would specify "the manner of . . . engaging [or] compensat-

ing . . . necessary personnel,” *id.* § 163.01(5)(g). The Board and the City would have broad discretion to structure the agreement to satisfy their needs. “Prior to its effectiveness, [however,] an interlocal agreement and subsequent amendments thereto shall be filed with the clerk of the circuit court of each county where a party to the agreement is located.” *Id.* § 163.01(11).

B. May a Planning Department employee, outside of District work hours, privately perform outside consulting/advisor services regarding concurrency and school planning?

Resolution of this question requires consideration of conditions and restrictions in District policy or practice, as well as state ethics regulations. The most pertinent restrictions in the Code of Ethics for Public Officers and Employees include (in no particular order):

- An employee must not accept any compensation, payment, or thing of value when such employee knows or should know that it was given to influence a vote or other action in which the employee is expected to participate in his or her official capacity. *Id.* § 112.313(4).
- No employee may corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust to secure a special privilege, benefit, or exemption for himself, herself, or others. *Id.* § 112.313(6).
- Employees shall not “have or hold any employment or contractual relationship with any business . . . doing business with” the School Board or District. *Id.* § 112.313(7)(a).
- Employees shall not “have or hold any employment or contractual relationship with any . . . agency which is subject to the regulation of” the School Board. *Id.* § 112.313(7)(a).
- No employee shall “have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.” *Id.* § 112.313(7)(a).
- No employee shall disclose or use information not available to members of the general public, and gained by reason of his or her official position, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. *Id.* § 112.313(8).

Based on your hypothetical question, we do not perceive that these rules would be violated if a Planning employee were to offer consulting services to other governmental agencies, as long as such outside work would not interfere with the performance of the employee’s duties for the District or impede the full and faithful discharge of his/her District responsibilities.

If, after reviewing this memorandum, you might wish to explore whether any specific proposed outside activity of one of your employees could run afoul of these ethics rules, we

would be pleased to assist in analyzing the situation in greater detail. However, although we can try to predict how the Florida Commission on Ethics would view a particular situation (based on past ethics opinions issued by the Commission), only the Commission itself is authorized to issue a binding opinion on ethics matters. You may wish to request a formal or informal ethics opinion from the Commission or to speak with one of their on-call ethics attorneys. More information is available from the Commission's web site at: www.ethics.state.fl.us.

As for local policy or practice, there does not appear to be any official Policy prohibiting District employees from engaging in other gainful activities that do not interfere with official duties. On April 22, 2002, the Board endorsed (as a first reading) a policy proposal regarding employee conduct, although the document was never adopted as official Board Policy because it would be necessary to engage in impact bargaining with the District's employee bargaining units. The following concepts are drawn from that unadopted policy proposal:

Employees must avoid any situation where their personal interests might conflict with or adversely affect the best interests of the District. In general, an employee may engage in outside interests outside of work hours and off of school property *provided* that prior written approval is obtained from the employee's supervisor (with a copy to the Superintendent/designee) and provided that such activities:

- a. Are lawful and not inconsistent with the interests of the District;
- b. Could not, by reason of association, have a derogatory effect on the District;
- c. Would not negatively impact assigned work hours or adversely affect the employee's job performance;
- d. Would not interfere with the job performance of other employees;
- e. Would not create conflicts of interest; and
- f. Would not result in the unlawful exchange of confidential or "inside" information.

Based on the limited hypothetical question, it does not appear that the proposed consulting activity would be likely to violate the foregoing guidelines. You may wish to discuss the matter further when more detail is known about an actual proposed activity.

In the event that you may have questions concerning the foregoing information, please do not hesitate to contact me.