

Ethics And Regionalism

Here a Code, There a Code

A Panel Presentation and Discussion



- Ethics in the News

- ethics in government has become a major news item locally due to the number of public officials who have been accused or convicted of crimes resulting from abuse of their public positions.
- from 1998-2008 Florida led the nation in public officials convicted of ethical violations - 800. New York was second with 700.

- Reaction to Public's Concerns

- Investigations of public corruption by 2 grand juries (statewide, Palm Beach Co.)

- Palm Beach and Broward Cos.:

- adoption of ethics code

- formation of ethics commissions

- creation of inspectors general

- Timeliness of Workshop
 - Addressing new local ethics rules and requirements applicable to SFRTA
 - Revision of SFRTA Code of Ethics
 - Refresher course on state ethics requirements

- Introduction and General Description of Codes of Ethics for Public Officers (e.g. SFRTA Board Members)

State Ethics Code

Palm Beach Code Ethics Code

Broward County Ethics Code

Miami-Dade County Ethics Code

SFRTA Ethics Code (federal requirement)

The Unwritten Code - Public Perception

- Gifts

- \$100, \$25 or \$0 State limits on solicitation and acceptance of gifts
- disclosure/reporting
 - gifts from governmental entities over \$100
 - gifts from lobbyists up to \$100
- event tickets
- County Code requirements

- Doing Business With SFRTA

- board members doing business with SFRTA
- business associates or relatives of board members doing business with SFRTA
- limited exceptions
- County Code requirements

- Voting Conflicts

- voting requirement (sec. 286.012, F.S.)
- declaration of a conflict
 - participation in discussion
 - filing requirements

“Investigators allege that Rubin received three \$15,000 bonuses for his work on successful grants that were supported by his wife.”

South Florida Business Journal, July 6, 2010

-walking off the dais before vote

- “Kraft was present at that July meeting but not on the dais when the vote was called. However, she did not file a conflict disclosure form as required by state law.”

- The Miami Herald, Oct. 4, 2010

- Conflicting Employment or Contractual Relationship

- board members

- employees

- County Code requirements

- Financial Disclosure

- information required on forms
- important filing dates
- potential fines and appeal process
- County Code requirements (additional reporting)

- Post Employment

- no applicable language in State Code of Ethics
- FDOT JPA language
- County Code requirements
- special district (such as SFRTA) may adopt by a resolution a two-year restriction on representing another person or entity for compensation before an agency of which the individual was an officer (Section 112.313(13), F.S.)

- Sunshine Law

- meetings (reasonable notice, open to the public, minutes)
- meetings of 2 or more board members
 - if matter could come before Board (“foreseeability”)
 - use of conduits and polling
 - exclusion of public, e.g. evaluation committee meetings
- elected officials and staff serving on same board
- emails/text messages (the “No Reply Rule”)
- closed door or “shade” meetings
- penalties (criminal and civil)

- Sunshine Law - recent Coral Springs case

“It’s the law that the intent of any meeting related to a matter of perceivable action to occur openly or publicly.” - prosecutor David Schulson

"You are assuming the appearance of impropriety creates impropriety." - Judge Fred Berman to prosecutor before dismissing case for lack of evidence

- Public Records

- public records perpetuate, communicate or formalize knowledge
- location of record, e.g. personal v. work computer
- obligation to produce
- relevant exemptions
 - ethics investigations
 - imminent litigation(whether civil court or administrative)

- Procurements/Cone of Silence

- discussions regarding ongoing procurements with bidders/proposers or their representatives
- evaluation committees (public meetings)
- lobbyist registration (not a requirement and lobbying hasn't been a major issue because of the Cone of Silence)

- Other Statutes

- s. 838.022(1)(a), Florida Statutes – Official Misconduct

- (1) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to:

- (a) Falsify, or cause another person to falsify, any official record or official document;

- Wasserstrom v. State, 21 3d 55 (Fla. 4th DCA 2009), upholding conviction under this statute.

- 18 U.S.C. § 1346. Federal mail fraud statute

- “For the purposes of this chapter, the term ‘scheme or artifice to defraud’ includes a scheme or artifice to deprive another of the intangible right of *honest services*.”

- Skilling v. United States, 130 S. Ct. 2896 (2010), holding that the statute only applies to bribery and kickbacks.