BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: Daniel Sturges,

Respondent. **Complaint No.: 23-052**

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ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT/COMPLAINANT

Respondent, Daniel Sturges, serves as a City Commissioner for Fernandina Beach. Complainant is Faith Ricketts Ross of Fernandina Beach, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Sections 112.3143(3)(a) and 112.313(6), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on October 11, 2023.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.3143(3)(a), Florida Statutes, by voting on a matter(s) that he knew would have inured to the special private gain or loss of a business associate.

APPLICABLE LAW

Section 112.3143(3)(a), Florida Statutes, provides as follows:

> No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Section 112.3143(1)(d), Florida Statutes, defines special private gain or loss as follows:

> "Special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:
>
> 1. The size of the class affected by the vote.
>
> 2. The nature of the interests involved.
>
> 3. The degree to which the interests of all members of the class are affected by the vote.

4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

In order to establish a violation of Section 112.3143(3)(a), Florida Statutes, the following elements must be proved:

1. Respondent must have been a county, municipal or other local public officer serving on a collegial body.

2(A). Respondent must have:

1) voted in his or her official capacity on a measure which would have inured to the Respondent's own special private gain or loss,

or

2) voted in his or her official capacity on a measure which the Respondent knew would have inured to the special private gain or loss of a principal by whom the Respondent was retained or to the parent organization or subsidiary of a corporate principal by which the Respondent was retained,

or

3) voted in his or her official capacity on a measure which the Respondent knew would have inured to the special private gain or loss of a relative or business associate of the Respondent.

OR

(B). When abstaining from a vote because of a conflict, the Respondent, prior to the vote being taken, must have failed to publicly state to the assembly the nature of his or her interest in the measure described in paragraph 2(A), above.

OR

(C). After abstaining from a vote because of a conflict, the Respondent failed to disclose the nature of his or her interest in the measure described in paragraph 2(A), above, as a public record in a memorandum filed within 15 days after the vote occurred with the person responsible for recording the minutes of the meeting at which the vote occurred.

ANALYSIS

Complainant alleges Respondent, a Fernandina Beach City Commissioner, and Todd Erickson are "business associates" due to their mutual association with Pirates Booty, LLC. (ROI 2) Complainant further alleges that Erickson, a real estate agent and broker, is a bartender at Brett's Waterway Café (Café) to supplement his income. (ROI 2)

The City owns the property located at 1 South Front Street in Fernandina Beach. (ROI 4) The building on the property is leased to Centre Street Restaurant Group which has a sublease with Brett Carter and Robert Fisher who operate the Café. (ROI 4) Since at least 2011, structural concerns have been noted and addressed related to the concrete pilings that provide support for the building. (ROI 4)

Respondent voted on matters relating to litigation regarding the building that houses the Café and a budget allocation to investigate the building's structure. (ROI 2) Complainant alleges Respondent's votes on these matters inured to the special private gain or loss of Erickson as he (Erickson) would lose income if the Café was forced to close. (ROI 2)

In 2019, Respondent and Erickson created Pirates Booty as a holding company to co-own a building. (ROI 6, 7) One half of the building houses Erickson's real estate business and the other half houses Respondent's construction business. (ROI 6, 7) Respondent and Erickson are not involved in any ongoing business ventures. (ROI 7)

On December 7, 2021, Respondent voted for a motion to authorize the City Attorney to defend the City's interests in a lawsuit filed by Centre Street Restaurant Group regarding the City

Engineer's determination that the building housing the Café was unsafe. (ROI 8, 10) On February 1, 2022, Respondent voted for a motion to enter into a professional services agreement for a company to inspect and report its findings related to the structural concrete support system of the building where the Café is located. (ROI 8, 10)

Erickson has served as a part-time bartender at the Café for approximately 14 years. (ROI 9) He began tending bar at the Café on a part-time basis during a real estate downturn and used the income to supplement his regular income. (ROI 9) After the real estate market recovered, he no longer depended on his part-time work to supplement his income. (ROI 9) However, because the work is enjoyable to him and allows him to do something different other than real estate, he continues to tend bar at the Café. (ROI 9)

Regarding the alleged business associate[1] relationship between Respondent and Erickson, in CEO 98-9, the Commission opined,

> that the intent of the "business associate" definition is to bring the voting conflicts law to bear on business endeavors, regardless of the form of business organization they take, rather than to bring under the law those relationships under which one merely holds a technical label or status (e.g., co-owner of property, shareholder in close corporation) in relation to others, but absent engagement in or carrying on of any common commercial/profit-making pursuit ("business enterprise").

The evidence reflects that Respondent and Erickson are only co-owners of property and have not engaged in any business enterprise. Thus, they are not business associates, as interpreted by the Commission, which is a requirement for a violation of the relevant subsection.

[1] "Business associate" means any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property. §112.312(4) Fla Stat.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable no cause to believe that Respondent violated Section 112.3143(3)(a), Florida Statutes.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using his position to secure a special benefit for himself and/or another.

APPLICABLE LAW

Section 112.313(6), Florida Statutes, provides as follows:

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

The term "corruptly" is defined by Section 112.312(9), Florida Statutes, as follows:

> "Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In order to establish a violation of Section 112.313(6), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.

2. Respondent must have:
   a) used or attempted to use his or her official position or any property or resources within his or her trust,
   or
   b) performed his or her official duties.

3. Respondent's actions must have been taken to secure a

special privilege, benefit or exemption for him- or herself or others.

4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting him- or herself or another person from some act or omission which was inconsistent with the proper performance of public duties.

ANALYSIS

Some of the underlying facts and circumstances relating to this allegation are contained above in Allegation One. Complainant alleges Respondent moved to terminate then-City Manager Dale Martin because he (Martin) allowed Commissioners to discuss documents relating to the insurance policy that the Café obtained in connection with its lease on City property. (ROI 2)

At a February 7, 2023 Commission meeting, Respondent read aloud a document he had prepared that outlined the reasons he was seeking Martin's termination. (ROI 15, 16) Included in Section 2(D) of Respondent's document it is mentioned that Martin showed special consideration and/or favoritism toward Commissioner Ronald "Chip" Ross. (ROI 16) In Section 2(E) of the document, Respondent indicated that Mayor Bradley Bean had specifically instructed Martin, during a prior Commission meeting, not to conduct independent research on any insurance matters involving the Café until City Attorney Tammi Bach returned from her vacation. (ROI 16) According to Respondent, Commissioner Ross, with Martin's approval, discussed the Café's insurance with outside counsel, costing the City $650.00 in legal fees. (ROI 16)

After discussion, Respondent moved to terminate Martin's employment effective immediately. (ROI 17) Instead, a substitute motion to postpone the termination vote until February 21, 2023 passed. (ROI 17) At the February 21st meeting, Respondent restated his motion to terminate Marin's employment which passed in a 4-1 vote. (ROI 18)

The City's Code of Ordinances provides that the City Manager is "under the direction and supervision of the City Commission and holds office at the pleasure of the City Commission."

(ROI 19, Exhibit C) There is insufficient evidence to reflect that Respondent acted in a manner inconsistent with the proper performance of his office when he brought forth the motion to terminate Martin which three other Commissioners supported.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

1. There is no probable cause to believe that Respondent violated Section 112.3143(3)(a), Florida Statutes, by voting on a matter(s) that he knew would have inured to the special private gain or loss of a business associate.

2. There is no probable cause to believe that Respondent violated Section 112.313(6) Florida Statutes, by using his position to secure a special benefit for himself and/or another.

Respectfully submitted this 23rd day of October, 2023.

Melody Hadley

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CEO 98-9 -- May 28, 1998

VOTING CONFLICT; CONFLICT OF INTEREST

COUNTY COMMISSIONER CO-OWNER/SHAREHOLDER OF HOUSEBOAT WITH ATTORNEY

To: Name Withheld At Person's Request (Sanford)

SUMMARY:

An attorney who owns a houseboat with a county commissioner is not a "business associate" of the county commissioner for purposes of the voting conflicts law [Section 112.3143(3)(a), Florida Statutes]. Under the circumstances of this opinion, co-ownership of the houseboat or ownership by both the lawyer and the commissioner of shares of stock in a closely-held corporation owning the houseboat does not amount to being "engaged in or carrying on a business enterprise." Therefore, the commissioner is not required to abstain and otherwise comply with the voting conflicts law regarding measures inuring to the special private gain of the lawyer.

In addition, Section 112.313(7)(a), Florida Statutes, would not be violated were the lawyer's firm to provide legal representation to the county. Any contractual relationships held by the county commissioner with the lawyer regarding the houseboat/corporation would be with the lawyer as an individual and not with the lawyer's firm (the business entity doing business with the county), and no frequently recurring conflict or impediment to the full and faithful discharge of public duty would be created. CEO's 83-71, 93-29, 93-32, 94-10, 94-13, 94-37, 95-4, and 96-31 are referenced.

QUESTION 1:

Does co-ownership of a houseboat by a public officer and two other natural persons (one of whom is an attorney), either directly or indirectly through a closely-held corporation, where the public officer, the other persons, their families, and friends use the boat from time-to-time for social/recreational purposes, constitute engaging in or carrying on a business enterprise such that the attorney is a "business associate" of the public officer for purposes of the voting conflicts law (Section 112.3143, Florida Statutes)?

Under the circumstances set forth below, your question is answered in the negative.

By your letter of inquiry, materials accompanying the letter, a previous letter from you to our staff, our staff's response to the previous letter, a memorandum from our staff concerning information provided by telephone by you and the attorney referred to herein, and additional correspondence and accompanying materials provided by you to our staff, we are advised that you serve as a member of the Seminole County Commission and that you and a

third person own a houseboat with a local attorney who occasionally represents clients before the County Commission on a partial contingent fee basis.[1] In addition, you advise that the three of you ("shareholders") each own a one-third interest in a closely-held corporation which holds title to the boat; that each of you is responsible for one third of all boat expenses; that the attorney's office maintains the corporate checkbook utilized to pay boat maintenance expenses; and that each shareholder contributes in proportion to his percentage interest in the corporation when the checking account needs additional funds.

Also, you advise that the boat was purchased in August 1995 by the corporation; that the purchase money (which was cash) came 50 percent from you and 50 percent from the attorney; that there is a lien on the boat in favor of a natural person, in the amount of $10,000, with the percentage of debt in relation to each shareholder corresponding to the shareholder's interest in the corporation; that the corporation purchased the boat from a couple; that you do not know the complete "chain of title" of the boat, but no person known to any shareholder has ever been an owner of the boat; and that there is no executed agreement in existence concerning use of the boat or concerning which shareholder will receive what percentage of any proceeds from any sale of the boat, but a draft agreement (a copy of which you provided), which gives no priority to any shareholder, is being considered.

Additionally, we are advised that the boat is not being held for investment purposes, "in that its value may diminish," and long-term disposition of the boat is unknown, "as is the anticipation of any profit from a sale"; that the shareholders neither treat nor have treated any boat expenses (food, drink, etc.) on income tax returns; that the corporation has not engaged in any activity other than ownership of the boat; that the boat is maintained with after-tax income and provides no tax deductions; that no Federal corporate income tax return was filed for the corporation; that no corporate Federal income tax losses are claimed in association with the houseboat/corporation; that no Florida tax/Department of Revenue filing was made for the houseboat/corporation; that the houseboat/corporation has no sales tax number; and that the houseboat/corporation generated no income or losses.

Further, you advise that the corporation was dissolved administratively for failure to timely file an annual report but that you intend to reinstate the corporation to protect yourselves from potential liability associated with the houseboat. Additionally, you advise that the houseboat is not treated as a business asset for tax purposes and that the corporation conducts no business enterprise, owns no property or assets other than the houseboat, and generates no income. Further, you advise that the houseboat is owned for purely recreational purposes as a getaway, sometimes used by you and your family, sometimes used by the attorney and his family, sometimes used by the third owner and his family, and sometimes the site to which friends, clients,[2] and others are invited. Also, you advise that no charge is made to use the houseboat and emphasize that the houseboat is not a business asset or a commercial venture generating any form of income or tax relief.

The Code of Ethics for Public Officers and Employees provides in part:

> No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(3); or which he or she knows would inure to the special private gain or

> loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. [Section 112.3143(3)(a), Florida Statutes.]
>
> 'Business associate' means any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property. [Section 112.312(4), Florida Statutes.]

Under Section 112.3143(3)(a), you would be required to abstain from voting, state your interest, and timely file CE Form 8B (Memorandum of Voting Conflict) in regard to measures inuring to the special private gain or loss of the attorney, if he is deemed to be your "business associate."

"Business associate" was added relatively recently as a prohibited relationship under the voting conflicts law,[3] and we have not had occasion to construe its meaning in a context similar to yours. However, each time we have opined that a business associate relationship exists, it has been in the context of a commercial/profit-making enterprise. See CEO 93-29 (city commissioner partner with others holding and receiving payments under mortgage encumbering property slated for possible inclusion in "Historic Convention Village"), CEO 94-10 (co-owner of office building), CEO 94-13 (co-owners of a karate school), CEO 94-37 (fellow stockholders in incorporated insurance agency), CEO 95-4 (common ownership of interests in a partnership doing business as a mobile home park), and CEO 96-31 (co-investor with commercial real estate broker). Further, it is apparent from our decisions that the intent of the "business associate" definition is to bring the voting conflicts law to bear on business endeavors, regardless of the form of business organization they take, rather than to bring under the law those relationships under which one merely holds a technical label or status (e.g., co-owner of property, shareholder in close corporation) in relation to others, but absent engagement in or carrying on of any common commercial/profit-making pursuit ("business enterprise").

Thus, in CEO 93-32, an opinion in which we found that a businessman investing in townhouses was not a "business associate" of an educational facilities authority member where both owned stock in an unlisted corporation, we stated that "[t]he change in the statute to incorporate 'business associate' was prompted by our decisions concluding that the prior statute did not apply where the measure under consideration inured to the gain of one closely associated in business with the officer, such as a partner . . . ." We also opined that "[i]n essence, although during part of the relevant time period both [the authority member] and the businessman each owned shares of stock in the same unlisted corporation, the circumstances do not indicate that the two of [them] were engaged in or carrying on a business enterprise together; rather, [they] both simply had invested in the same company." Later, in CEO 94-10, our recognition that the statutory focus of "business associate" is on the existence of a common

business enterprise, rather than on co-ownership of property or ownership of closely-held stock standing alone, was echoed. In CEO 94-10, we stated:

> We find that being a co-owner of an office building with another does make that person one's 'business associate.' This is so not merely because the persons are co-owners of property, but also because the joint ownership of such a property (an office building) necessarily amounts to being engaged in or carrying on a business enterprise.

Thus, in view of our precedent, we find that your co-ownership of a houseboat, or ownership of stock in a closely-held corporation owning the houseboat, with an attorney does not make the attorney your "business associate," under facts and circumstances which indicate co-ownership of a single personal/recreational asset by you, the attorney, and a third person and which do not indicate a common business enterprise involving you and the attorney.[4]

Accordingly, we find, under the circumstances present herein, that you are not required to abstain from voting and otherwise comply with the voting conflicts law regarding measures inuring to the special private gain or loss of an attorney with whom you own a houseboat.

QUESTION 2:

> Would a prohibited conflict of interest be created under Section 112.313(7)(a), Florida Statutes, were the County to retain the lawyer's firm to handle litigation?

Under the circumstances herein, this question is answered in the negative.

Your letter of inquiry also requests our opinion in regard to the lawyer's firm's proposed provision of legal services to the County in handling litigation in which the County is involved in enforcing its codes and ordinances relative to "adult"/sexually-oriented businesses.[5]

Regarding this question, the Code of Ethics for Public Officers and Employees provides:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee . . .; nor shall an officer or employee of an agency 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. [Section 112.313(7)(a), Florida Statutes.]

Inasmuch as any contractual relationship you would have with the lawyer by virtue of your houseboat/corporate relationship would be with the lawyer as an individual and not with his law firm, you would not hold a contractual relationship with the law firm (the business entity that would be doing business with the County) under the first part of Section 112.313(7)(a). See, for example, CEO 83-71 (city housing authority member engaged in real estate partnership with individual who is partner of accounting firm auditing authority's books does not have contractual relationship with accounting firm). Further, under the circumstances herein, we do not find that you would have a continuing or frequently recurring conflict or impediment to the full and faithful discharge of public duty under the second part of Section 112.313(7)(a), were the lawyer's firm to provide representation to the County.[6]

This question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on May 28, 1998 and **RENDERED** this 2nd day of June, 1998.

Kathy Chinoy
Chair

[1] You advise that the boat is not motorized, is permanently moored, and was purchased after you were originally elected to the County Commission.

[2] You advise that roughly ten percent of boat gatherings include persons who are clients of either yourself, the attorney, or the third shareholder.

[3] See Chapter 91-85, Laws of Florida, Section 5. Prior to the change in the law, retention by a principal was the only enumerated prohibited vicarious relationship.

[4] We stress that our finding is limited to your particular scenario, a represented situation in which it appears, inter alia, that the boat is not an income-generating/tax-savings asset and is not being held for investment/profit-making resale purposes.

[5] Your inquiry letter focuses on whether the voting conflicts law would be implicated regarding County retention of the firm. Inasmuch as the lawyer is not your "business associate" under the facts set forth above in Question 1, measures inuring to his special private gain or loss, including a measure to hire his firm, do not implicate Section 112.3143(3)(a) in regard to you.

[6] The attorney should contact The Florida Bar regarding any questions he may have regarding ethical standards governing his conduct as an attorney, vis-a-vis the situation described herein, inasmuch as the Commission on Ethics does not administer the standards of conduct applicable to Bar members.