

MEMORANDUM

TO: Commissioner Michael Udine

FROM: Rocio Blanco Garcia, Assistant County Attorney

DATE: March 24, 2017

**RE: Offer by South Florida Water Management System to Provide Educational Tour of Water Management System
CAO File: 17-04 (Gifts)**

The South Florida Water Management District ("SFWMD"), a regional governmental agency created pursuant to Section 373.069, Florida Statutes, has offered to give you an educational tour of the water management system, which is located partly within your district. Given the nature of the system, in order to provide a comprehensive overview, the tour includes a 30 to 60-minute helicopter ride and an hour-long airboat tour, which, if available to the public, would have a combined estimated value exceeding \$100. Any meals or other food and drink will be at your own expense. Lorraine Mayers of the SFWMD has confirmed that the SFWMD owns both the helicopter and airboat that will be used, and that this equipment is kept by the SFWMD for the express purposes of conducting inspections and educational tours. You have asked whether you may accept the tour, and, if you did, whether you would have any reimbursement or disclosure obligations. This memorandum confirms that, in our opinion, you may accept the tour of the water management system and do not have any reimbursement obligation. You may, however, be required to file a Form 10 disclosing the value of the tour in 2018, which would be filed concurrently with your Form 6.

Under the State and County codes of ethics, there are two primary restrictions on the acceptance of gifts. The first is that no gift may be solicited or accepted if it may reasonably be perceived to have been given to encourage you to take any action in your official capacity. Section 112.313(4), Florida Statutes (2016). The second restriction caps the value of gifts that may be accepted from certain donors.

Florida Law:

Under Section 112.3148(4), Florida Statutes, absent any applicable exception, County Commissioners are "prohibited from knowingly accepting, directly or indirectly, a gift from

a vendor doing business with the [County] . . . or [from] a lobbyist who lobbies the [County Commission] or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100 . . .". That provision, however, does not apply where the vendor is a water management district.

Section 312.3148(6)(a), Florida Statutes, specifically provides that "a water management district created pursuant to s. 373.069 [. . .] may give [. . .] a gift having a value in excess of \$100 to any reporting individual [. . .] if a public purpose can be shown for the gift [. . .]." Under 312.3148(6)(b) you may accept a gift from a water management district which value exceeds \$100 under the same terms. While it is this Office's opinion that the tour does not constitute a gift to you (see below), an analysis of whether the tour is a gift under state law is not necessary in this case. Irrespective of the tour's characterization as a gift, it may be accepted under Florida law based on the express terms of Section 112.3148(6)(b). The tour has the sole public purpose of educating you on issues of great import to the environment, the ecosystem of the Everglades, and water management within your district, all of which will enhance your ability to make informed policy decisions as a County Commissioner. Counsel for the Florida Commission on Ethics, with whom we have consulted prior to issuing this opinion, concurs that the tour at issue falls within the scope of Section 112.3148(6)(a)-(b).

County's Code:

Under the County's Ethics Code, Commissioners cannot accept any gift, directly or indirectly, from a lobbyist or vendor, which gift exceeds \$5. While the SFWMD is listed as a vendor in the County's database, the County's Ethics Code specifically exempts governmental entities from the definition of vendor. As such, because the SFWMD, a regional governmental agency, is not a vendor, the \$5 limitation does not apply. Instead, any gifts from the SFWMD are subject to the \$50 limitation applicable to gifts received in a Commissioner's official capacity from a non-vendor or non-lobbyist source.

Although the tour at issue exceeds the \$50 cap, this Office does not consider such tour a personal gift to you. The tour is purely educational and aimed at keeping you apprised of issues that affect your district and the County as a whole. It is in the public's interest to make sure that you are well informed when enacting any policies that may affect your constituents and our ecosystem. Therefore, consistent with prior opinions issued by this Office (one involving a helicopter tour to educate on beach nourishment issues, and another a lengthy "ride along" with BSO), and because you will not be receiving any meals or tangible property, it is our opinion that the tour is not a gift to you and is, therefore, not subject to the \$50 limitation on receiving gifts in your official capacity.

Commissioner Michael Udine
March 24, 2017
Page 3

Although you may accept the tour under both State and County law and do not have to reimburse the SFWMD for the value of such tour, you may be required to disclose the value of the tour next year on a Form 10. If such disclosure is required, applicable law requires the SFWMD to inform you thereof by providing to you a statement of the tour's value by March 31, 2018.

Please contact Drew Meyers or me if we may be of further assistance regarding this matter.

/s/ Rocio Blanco Garcia
Rocio Blanco Garcia
Assistant County Attorney

RBG/ab

c: Andrew J. Meyers, Chief Deputy County Attorney