

**MEMORANDUM**

**TO:** Commissioner Mark D. Bogen

**FROM:** Andrew J. Meyers, Chief Deputy County Attorney

**DATE:** April 4, 2017

**RE:** **Private Business Activities as Attorney, and Public Activities as County Commissioner**  
**CAO File: 17-05E**

You have been a licensed attorney for more than thirty-three years, and have provided legal representation to condominium and homeowners' associations (collectively, "Associations") for the past twenty-five years. You have also written newspaper columns and have appeared on television to address legal issues of interest, including matters of interest to Associations. In 2011, prior to your 2014 election to the Board of County Commissioners, you created the Condo Council, Inc., a nonprofit entity ("Condo Council"), which provides educational information to Associations in two ways.

First, the Condo Council maintains an informational internet website that may be accessed by anyone interested in condominium or homeowners' association issues. Second, persons active in Associations may become Condo Council members free-of-charge, which results in them being invited to three or four lunch meetings per year during which invited speakers address topics of specific interest to Associations. The cost of the lunches is typically paid by private sponsors, such as roofing or mold remediation companies, who view the lunch meetings, in part, as an opportunity to market to the Associations. Your law firm, the Bogen Law Group, has sometimes paid a portion of the cost of the lunches when the private sponsorships do not cover the full expense. While you were running for office, because of time constraints, another individual assumed leadership of the Condo Council. That individual has since withdrawn and you intend to resume leadership of the Condo Council. All of the activities described in this paragraph are undertaken by you in your private capacity as a licensed attorney.

While the exclusive focus of Condo Council meetings is on your private dealings as an attorney, if someone before, during, or after a Condo Council meeting asks you about a public policy issue, much like someone who you run into at a grocery store or restaurant might, you will "put on your County Commissioner hat" and provide your thoughts on the issue.

Additionally, in your public capacity as a County Commissioner, you periodically hold town hall-style meetings to obtain constituent input on public issues. To increase turnout, you send notice of these meetings to important constituents, including Association leaders (who, given the demographics of your Commission district, are among your primary constituents). Because you believe these meetings provide critical information to you as a public officer, you seek to increase turnout by providing inexpensive boxed lunches ("sub" sandwiches) to attendees. Because you do not believe public funds should be used to pay for these lunches, you personally pay for the lunches. At these meetings, you discuss County issues and listen to the concerns of your constituents. If any attendee seeks to discuss a private legal matter, or states an interest in retaining you as legal counsel, you state that you are there solely in your public capacity to discuss public issues. Thus, at these meetings held in your role as County Commissioner, you never "put on your private attorney hat."

If you have any reason to believe that these facts are inaccurate or incomplete in any way, please let us know because it may affect our opinion.

You have asked us to review these facts and to advise as to whether the above-referenced activities create any ethical conflicts or concerns. It is our opinion that, so long as you continue to carefully keep separate your public and private activities, the activities do not create any conflict under either the County's Elected Official Code of Ethics (the "County Ethics Code") or under the state ethics code. Please be reminded that, although we are confident in our opinion under both codes, only the Florida Commission on Ethics can provide binding guidance under the state ethics code.

Nothing in the County Ethics Code specifically addresses this issue. The only express restrictions on outside employment apply to lobbying activities. Thus, we find no inconsistency between your above-referenced activities and the County Ethics Code.

With regard to the state ethics code, Sections 112.313(6) and 112.313(7), Florida Statutes, respectively provide:

(6) MISUSE OF PUBLIC POSITION. No public officer . . . shall corruptly use or attempt to use his or her official position . . . or perform his or her official duties [ ] to secure a special privilege, benefit, or exemption for himself, herself, or others.

(7)(a) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.

No public officer . . . 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 . . . 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.

These provisions must also be considered in the context of elected officials participating in outside employment as expressly envisioned by the state ethics code, which seeks to balance an official's private economic interests with the official's responsibility to serve the public:

[T]he law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. Public officials should not be denied the opportunity, available to other citizens, to acquire and retain private economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided.

Fla. Stat. Section 112.311.

Any public official who engages in a private career must be careful to avoid an allegation that he or she is improperly using his or her public position for private gain. We believe that you have been careful in keeping your private career and public position separate.

The Condo Council is a private entity devoted to providing to Associations information of specific relevance to them. Its focus is on the activities and issues facing Associations, and not on public policy. You do not use any public money or County staff in connection with activities of the Condo Council. That it is unrelated to your public service is buttressed by the fact that you created the Condo Council years before you ran for public office.

In contrast, the town hall-style lunch meetings, which you conduct solely in your capacity as a County Commissioner, focus on public issues of interest to your district's constituents. These meetings allow you to provide an update regarding County issues that might affect these constituents, and allow you to hear their concerns and to answer their questions. You do not discuss private legal matters, nor do you allow attendees to discuss retaining you as private counsel. In other words, you are not using these town hall meetings to secure any benefit to yourself.

For these reasons, it is our opinion that the above-referenced activities are fully consistent with all applicable state and County ethics provisions.

If we can be of further assistance regarding this matter, please contact the County Attorney, Assistant County Attorney Mark Journey, or me.

/s/ Andrew J. Meyers  
Andrew J. Meyers  
Chief Deputy County Attorney