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**GOREN CHEROF  
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ATTORNEYS AT LAW

## GCDE ETHICS ADVISORY OPINION

To: Commissioner Massimo “Max” Pulcini

From: Jacob G. Horowitz, City Attorney *JGH*

Date: July 25, 2019

Re: City of Cooper City (“City”) / Code of Ethics – Advisory Opinion

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You have provided the City Attorney’s Office with the facts set forth in Section I, below, and requested a “safe harbor” advisory opinion under the Broward County Code of Ethics for Elected Officials (“Code of Ethics” or “Code”).

### I. ISSUE AND FACTS PRESENTED

The Cooper City City Commission has appointed you to serve on the City’s Auditor Selection Committee (the “Committee”), in accordance with Section 218.391, F.S., as amended. The Code of Ethics prohibits elected officials from serving on procurement selection/evaluation committees. In light of the foregoing, you have asked whether you may legally serve on the Committee.

### II. ANALYSIS

Section 218.391, F.S., establishes the auditor selection procedures for local government. These procedures include the creation of an auditor selection committee, which is tasked with certain duties and responsibilities, as set forth in the statute. In 2019, the Legislature amended certain provisions of Section 218.391, F.S., to require a member of the city commission to serve on the auditor selection committee, and to serve as the committee’s chair (Ch. 2019-15, Laws of Florida). This provision became effective July 1, 2019.

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Please reply to Fort Lauderdale Office

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The Code of Ethics prohibits elected officials from being included as members on any selection/evaluation committee. Section 1-19(C)(6)(a), of the Code, expressly states, in relevant part, as follows:

It shall be a conflict of interest for any Elected Official to serve as a voting member of a Selection/Evaluation Committee in connection with any prospective procurement by the Elected Official's governmental entity. Elected Officials shall not be included as members on any Selection/Evaluation Committee and shall not participate or interfere in any manner at Committee meetings or in the selection of Committee members, which members shall be appointed by the County Administrator or appropriate municipal staff, as relevant.

A conflict in law exists when an ordinance declares something to be right which the state has declared to be wrong, or vice versa. *Scavella v. Fernandez*, 371 So.2d 535 (Fla. 3<sup>rd</sup> DCA 1979). The prohibition in the Code of Ethics clearly conflicts with the statutory requirement that a member of the commission serve as chair of the auditor selection committee. If conflict arises in such circumstances, state law prevails. *Board of County Commissioners of Dade County v. Wilson*, 386 So.2d 556 (Fla. 1980). See also, *City of Miami Beach v. Rocio Corporation*, 404 So. 2d 1066 (Fla 3d DCA 1981).

On July 16, 2019, the Cooper City City Commission appointed you to serve as the commission designee and chair of the City's auditor selection committee pursuant to Section 218.391, F.S. Since a member of the city commission is statutorily required to serve in this position, it is our opinion that the prohibition to such service, as set forth in the Code of Ethics, is invalid as it relates to the Committee and that you are legally able to serve in that capacity.

### III. CONCLUSION

Based on the foregoing, it is the opinion of the City Attorney's Office that you are legally permitted to serve as a member of and chair of the City's auditor selection committee pursuant to Section 218.391, F.S. As a result of its expressed conflict with state law, the prohibition on elected officials serving as members of selection/evaluation committees is legally invalid and unenforceable, as it relates specifically to auditor selection committees.

Please be advised that this opinion is limited to the Broward County Code of Ethics for Elected Officials. This advisory opinion is issued pursuant to Section 1-19(c)(8) of the Code of Ethics, and may be relied upon by the individual who made the request. This analysis is limited solely to the facts presented. Within fifteen (15) days of receiving this opinion, a copy must be sent in a searchable "pdf" format to [ethicsadvisoryopinions@broward.org](mailto:ethicsadvisoryopinions@broward.org) for inclusion in the searchable database of advisory opinions maintained by the County.

Please contact our office if there is any additional information that we can provide.