


**ETHICS OPINION**  
***Office of the City Attorney***

**TO:** Members of the Coral Springs City Commission

**FROM:** John J. Hearn, City Attorney 

**CC:** Frank Babinec, City Manager  
Debra Thomas, CMC, City Clerk

**RE:** Serving on an Auditor Selection Committee

**DATE:** May 25, 2021

---

On the June 2, 2021 agenda, an item will be coming before you to appoint an Auditor Selection Committee. This Committee is responsible for recommending an external audit firm to the City Commission. Section 218.391, Florida Statutes, requires that one member of the Committee be a member of the City Commission and chair the Committee. As the Broward County Code of Ethics prevents elected officials from serving on procurement selection committees, this opinion is being provided to you.

As background, Section 218.391, Florida Statutes, establishes the external 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 to require a member of the City Commission to serve on the Auditor Selection Committee as the Committee's Chair. This provision became effective July 1, 2019.

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.

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); *City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066 (Fla 3d DCA 1981).

Since a member of the City Commission is statutorily required to serve as a Chair of the Committee, it is our opinion that the prohibition of such service, as provided for in the Code of Ethics, is invalid. Therefore, a member of the Commission is legally able to serve on as Chair of the Committee.

If you need additional guidance regarding this matter, please feel free to contact my office.