

FLORIDA STATUTE ON ETHICS TRAINING

112.3142 Ethics training for specified constitutional officers and elected municipal officers.—

(1) As used in this section, the term “constitutional officers” includes the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.

(2)(a) All constitutional officers must complete 4 hours of ethics training each calendar year which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

(b) Beginning January 1, 2015, all elected municipal officers must complete 4 hours of ethics training each calendar year which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

(c) The commission shall adopt rules establishing minimum course content for the portion of an ethics training class which addresses s. 8, Art. II of the State Constitution and the Code of Ethics for Public Officers and Employees.

(d) The Legislature intends that a constitutional officer or elected municipal officer who is required to complete ethics training pursuant to this section receive the required training as close as possible to the date that he or she assumes office. A constitutional officer or elected municipal officer assuming a new office or new term of office on or before March 31 must complete the annual training on or before December 31 of the year in which the term of office began. A constitutional officer or elected municipal officer assuming a new office or new term of office after March 31 is not required to complete ethics training for the calendar year in which the term of office began.

(3) Each house of the Legislature shall provide for ethics training pursuant to its rules.

FLORIDA COMMISSION ON ETHICS RULE

34-7.025 Ethics Training Course Content.

(1) Beginning in 2013, constitutional officers are required by Section 112.3142, F.S., to complete four (4) hours of ethics training each calendar year.

(2)(a) In addition to receiving training on Florida's public records laws (Chapter 119, F.S.) and open meetings laws (Chapter 286, F.S.), constitutional officers are required to obtain ethics training that is derived from Article II, Section 8, Florida Constitution, "Ethics in Government," and Chapter 112, Part III, F.S., the "Code of Ethics for Public Officers and Employees."

(b) Providers may develop and offer courses using a "menu" approach to fulfill agency-specific training needs. Subjects that must be covered in training shall include one or more of the following:

1. Doing business with one's own agency;
2. Conflicting employment or contractual relationships;
3. Misuse of position;
4. Disclosure or use of certain information;
5. Gifts and honoraria, including solicitation and acceptance of gifts, and unauthorized compensation;
6. Post-officeholding restrictions;
7. Restrictions on the employment of relatives;
8. Voting conflicts when the constitutional officer is a member of a collegial body and votes in his or her official capacity;
9. Financial disclosure requirements, including the automatic fine and appeal process;
10. Commission procedures on ethics complaints and referrals; and
11. The importance of and process for obtaining advisory opinions rendered by the Commission.

(3) Providers are encouraged to seek accreditation from The Florida Bar for courses offered pursuant to Section 112.3142, F.S., so that attendees who are members of The Florida Bar may also obtain continuing legal education credit for course attendance.

CEO 13-15 - September 18, 2013

TRAINING

ETHICS TRAINING REQUIREMENTS FOR CONSTITUTIONAL OFFICERS

To: Name withheld at person's request

SUMMARY:

Guidance is provided concerning newly-enacted legislation requiring ethics training for Constitutional Officers.

BACKGROUND:

On behalf of the Osceola County Board of County Commissioners, you request guidance with respect to a number of questions pertaining to the training requirements of Chapter 2013-36, Laws of Florida (CS SB 2). The law went into effect May 1, 2013, and amends the Code of Ethics to create Section 112.3142, Florida Statutes, which provides:

Ethics training for specified constitutional officers.—

(1) As used in this section, the term "constitutional officers" includes the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.

(2)(a) All constitutional officers must complete 4 hours of ethics training annually that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

(b) The commission shall adopt rules establishing minimum course content for the portion of an ethics training class that addresses s. 8, Art. II of the State Constitution and the Code of Ethics for Public Officers and Employees.

(3) Each house of the Legislature shall provide for ethics training pursuant to its rules.

QUESTION 1:

May the County Attorney's Office, other local government attorney, or any person with knowledge of the required subjects provide the training?

Your question is answered in the affirmative.

The statute does not mandate that the training come from any particular source. Further, as you observe, the language of the statute provides that the training requirement "may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered." Accordingly, it is our view that any knowledgeable person or entity may provide the training. However, public officers and employees should remember that ultimate responsibility for compliance with the Code of Ethics lies with the individual public officer or employee, and that receipt of erroneous information is not generally a defense to an allegation that an official has violated the Code. Therefore, the official should take steps to assure him-or-herself that the provider has sufficient expertise in the subject matter to provide meaningful and accurate information.

QUESTION 2:

a) Could the training requirement be satisfied through attendance of a pre-recorded program or webinar?

This question is answered in the affirmative.

Nothing in the law requires attendance at any specified class or training program, or specifies that the program be presented "live," i.e., with a teacher and learner physically present in the same room.

b) Could the training requirement be satisfied through a review of written materials by the official?

To the extent that such review is part of a formalized study program, the requirement could be satisfied through a review of written materials. For example, the training linked to our website (and for which our staff prepared the content) largely consists of review by the learner of written materials,

followed by questions for the learner to answer, and would meet the requirements of the new law.

However, the requirement could not be satisfied by a self-directed learning program consisting of the official's review of materials he-or-she selects independently. By using the term "training" the statute contemplates education which is provided by persons proficient in the subject matter, rather than self-study.

QUESTION 3:

Is the hourly requirement minute-for-minute?

This question is answered in the negative.

As you point out, continuing legal education courses offered by The Florida Bar are provided in credit "hours" that actually last only 50 minutes. As courses offered by the Bar appear to be specifically contemplated by the legislation, the credit hour measurement of such courses was presumably contemplated also. Accordingly, it is our view that a 50-minute "hour" would satisfy one hour of the training requirement, whether it is a Bar Continuing Legal Education for attorneys or is other training for attorney or non-attorney Constitutional officers.

QUESTION 4:

Is the annual requirement measured by calendar year?

This question is answered in the affirmative.

The new law requires four hours training "annually," but does not define that term. When construing a statute, courts attempt to give effect to the Legislature's intent, looking first to the actual language used in the statute and its plain meaning. See, *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005). When considering the meaning of terms used in a statute, the courts look to the terms' ordinary definitions, which may be derived from dictionaries. See, *Metro. Cas. Ins. Co. v. Tepper*, 2 So. 3d 209, 214 (Fla. 2009).

The question here lies not with defining the term "annually,"—there seems to be no dispute that the term means "every year." Rather, the question is: what constitutes a "year"? The first definition of "year" in *Black's Law Dictionary*, Ninth Edition, 2009, is, "Twelve calendar months beginning January 1 and

ending December 31.—Also termed calendar year." (Emphasis in original.) The first definition of the term "year," in the Webster's New World College Dictionary, Fourth Edition, 2010, is "a period of 365 days (in a leap year, 366 days) divided into 12 months and regarded in the Gregorian calendar as beginning Jan. 1 and ending the following Dec. 31." In keeping with the manner in which the courts interpret statutory language, as described above, we find this is the appropriate definition to be applied in determining the meaning of the term "annually."¹

This view is consistent with the apparent legislative intent of Ch. 2013-36. Senate Bill 2 was the expression of the Florida Legislature's commitment to ethics reform. In addition to the training requirement, it imposed a variety of other new requirements on public officers and employees, and it was the very first bill passed out of the Legislature, which chose to make it effective immediately upon signing. All these factors suggest the Legislature intended that the changes be implemented without delay and that the affected officials obtain the training within the eight months remaining in 2013 after the bill's passage.

Although you suggest that using a calendar year may cause a hardship for officials who take office late in the year, the same would be true if the measurement used were a fiscal year, or May 1 (the date the law became effective) through April 30, or any other measurement of a "year" which has a specific starting and ending date. Instances in which Constitutional officers take office late in the calendar year will be relatively rare, as most elections for those offices are held in November, with the successful candidate taking office in January of the following year. Even in cases where there is a special election late in the year, or an appointment to fill a vacancy, we note that the law only requires four hours of training. Given the availability of online sources of training, it does not appear that the hardship, if any, would be unduly difficult to overcome.

Accordingly, it is our view that "annually," as used in Section 112.3142, means occurring between January 1 and December 31 of each and every year, beginning with the year 2013.

QUESTION 5:

Must the training have been recently created?

This question is answered in the negative.

Ch. 2013-36, in addition to adding a training requirement, also made other changes to the ethics laws. All of these became effective May 1, 2013. Thus, training provided prior to May 1, 2013, and some training available through online outlets such as The Florida Bar, were rendered out of date with respect to some aspects of the Code.

This presents a dilemma for the public officials affected by the training requirement. An official may have already taken the requisite number of hours, or may wish to purchase an existing training program from the Bar or other source, but in either case the information would not be completely current, and sources of up-to-date content may not be plentiful. In light of that reality, it is our view that training taken in 2013, whether it reflects the law as it stood prior to May 1, 2013, or reflects the changes in the law, should "count" toward satisfaction of the training requirement. Again, we caution that compliance with the law is the responsibility of the individual public officer or employee, and that reliance on out-of-date information will not be a defense to an allegation of a violation of the Code. Thus it is to the official's advantage to seek out training that is current.

Your questions are answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on September 13, 2013, and **RENDERED** this 18th day of September, 2013.

CEO 13-24 - December 18, 2013

**TRAINING
COMPOSITION OF TRAINING HOURS**

To: Rob Teitler, Attorney

SUMMARY:

A training program composed of two hours on the subject of the Code of Ethics for Public Officers and Employees or Article II, Section 8, Florida Constitution, and one hour each of open meetings and public records, would satisfy the four-hour training requirement imposed by Section 112.3142, Florida Statutes.

QUESTION:

Would a training program comprising two hours of ethics and one hour each of public records and open meetings satisfy the training requirement imposed by Section 112.3142, Florida Statutes?

Your question is answered in the affirmative.

You write that you are an attorney who is a member of the Executive Council of the City, County and Local Government Law Section of The Florida Bar, and that you are responsible for the Section's annual Sunshine Law, Public Records and Ethics seminar, held each February in Tallahassee. This seminar, you advise, includes segments on open meetings, or "sunshine" law, public records, and several public-service-ethics topics under the Florida Code of Ethics for Public Officers and Employees. You would like to organize the schedule for the 2014 seminar in such a way as to provide a discrete four-hour block of time which will satisfy the four-hour training requirement of newly-enacted Section 112.3142, Florida Statutes, because you believe doing so will increase attendance at the seminar as well as enhance the marketability of the program.

Your question centers on the required content of the four-hour statutory training requirement. Specifically, you inquire whether a one hour public records overview segment; a one hour sunshine law overview segment; and two one-hour segments of subjects from the Florida Code of Ethics (i.e., gifts, conflicts, reporting) would satisfy the requirement.

Section 112.3142, Florida Statutes, became effective May 1, 2013, through Ch. 2013-36, Laws of Florida. It states:

Ethics training for specified constitutional officers.-

(1) As used in this section, the term "constitutional officers" includes the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.

(2)(a) All constitutional officers must complete 4 hours of ethics training annually that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

(b) The commission shall adopt rules establishing minimum course content for the portion of an ethics training class that addresses s. 8, Art. II of the State Constitution and the Code of Ethics for Public Officers and Employees.

(3) Each house of the Legislature shall provide for ethics training pursuant to its rules.

While calling for four hours of training in the areas of ethics, public records, and public meetings, the legislation is silent as to what combination of hours and topics will satisfy the requirement. As the Legislature has not indicated a preference for a particular combination, it is our view that the combination you propose—two hours of ethics, one hour of open meetings, and one hour of public records, would satisfy the requirement.

Accordingly, we find that the training program you propose, comprising two hours of ethics training¹ and one hour each of public records and open meetings training, would satisfy the requirement imposed by Section 112.3142, Florida Statutes.

ORDERED by the State of Florida Commission on Ethics meeting in public session on December 13, 2013, and **RENDERED** this 18th day of December, 2013.