

## CHAPTER 34-6 ADVISORY OPINIONS

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### **34-6.001 General.**

The Commission on Ethics is authorized to render advisory opinions about the application of the Sunshine Amendment (Article II, Section 8, Florida Constitution), of the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, F.S.), and of Sections 350.031, 350.04, 350.041 and 350.042, F.S. If a person does not have standing to receive an advisory opinion from the Commission, but would have standing to receive a declaratory statement, or if the Commission does not have the authority to render an advisory opinion, but would have the authority to render a declaratory statement, the Commission may issue a declaratory statement.

*Rulemaking Authority 112.322(9) FS. Law Implemented 112.3215(10), 112.322(3), 350.041(3), 350.043 FS. History—New 4-11-76, Amended 9-21-77, Formerly 34-6.01, Amended 8-7-94, 7-28-98.*

### **34-6.002 Persons Who May Receive an Advisory Opinion – Standing.**

(1) A public officer, candidate for public office, or public employee may request an advisory opinion about how Art. II, Sec. 8, Fla. Const., or the Code of Ethics applies to his or her own situation.

(2) A public officer or employee having the power to hire or terminate employees may request an advisory opinion about how the Code of Ethics applies to any such employee or applicant for employment. A public officer having the authority to appoint a person to public office may request an advisory opinion under the Code of Ethics with respect to any such person; where an appointment is made by a commission, council, or board rather than by an individual public officer, the commission, council, or board or any member thereof may request an advisory opinion with respect to any such appointee.

(3) A former public officer or employee may request an advisory opinion concerning any provision of the Code of Ethics or the Sunshine Amendment which might apply to him or her in a post-office holding or post-employment context.

(4) A member of the Public Service Commission or of the Florida Public Service Commission Nominating Council may request an advisory opinion from the Commission as provided in Sections 350.041 and 350.043, F.S.

(5) Any person may request an advisory opinion concerning the applicability and interpretation of Section 112.3215, F.S., to himself or herself in a particular context.

(6) An attorney may request an advisory opinion in behalf of a client if the client would have standing to request that opinion under subsection (1), (2), (3), (4) or (5) above, and where such standing clearly appears in the written request. An employee of a person or body having standing under subsection (1), (2), (3), (4) or (5) above, may request an opinion in behalf of that person or body when directed to do so by that person or body and where such standing and direction clearly appear in the written request. In these cases, the opinion shall be issued to the attorney or employee who requested the opinion. An elected official may request an advisory opinion in behalf of a constituent if the constituent would have standing under subsection (1), (2), (3), (4) or (5) above, and if the constituent has requested the legislator to seek the opinion from the Commission, where such standing and the fact of the constituent's request clearly appear in the written request. However, in order to avoid any appearance of impropriety or undue influence, such opinions shall be issued directly to and in the name of the constituent.

*Rulemaking Authority 112.322(9) FS. Law Implemented 112.3215(10), 112.322(3), 350.041(3), 350.043 FS. History—New 4-11-76, Amended 9-21-77, 1-23-78, 7-2-80, Formerly 34-6.02, Amended 8-7-94, 7-28-98.*

### **34-6.003 Subject Matter of Advisory Opinions.**

Advisory opinions may be rendered only with respect to the interpretation and applicability of Article II, Section 8, Florida Constitution, of Part III, Chapter 112 or Sections 350.31, 350.04, 350.041 and 350.042, F.S.

*Rulemaking Authority 112.322(9) FS. Law Implemented 112.3215(10), 112.322(3), 350.041(3), 350.043 FS. History--New 4-11-76, Amended 9-21-77, 1-23-78, Formerly 34-6.03, Amended 8-7-94.*

### **34-6.004 Form of Requests for Opinions.**

Requests for opinions shall be in writing and signed by the person making the request or by his or her representative. Requests for opinions shall state the official status of the person making the request and shall state all material facts necessary for the Commission on Ethics to understand the circumstances and render a complete and correct opinion. The person requesting the opinion may at any time furnish the Commission with legal memoranda, additional facts, or any other information relevant to the opinion requested.

*Rulemaking Authority 112.322(9), 120.53(1) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322(3), 350.041(3), 350.043 FS. History--New 4-11-76, Formerly 34-6.04, Amended 7-28-98.*

### **34-6.006 Receipt of Requests for Advisory Opinions and Withdrawal of Requests.**

(1) The staff of the Commission shall review each request for an advisory opinion. If the staff determines that the person making the request is not a person who may receive an advisory opinion as provided in Rule 34-6.002, F.A.C. above, the staff shall promptly notify the person making the request that an advisory opinion cannot be rendered. If the person making the request disagrees with the staff's notification, he or she may request in writing that the Commission decide whether he or she has standing to receive an opinion, in which case the matter shall be agendaed for action at the next available Commission meeting.

(2) If the person seeking the advisory opinion is entitled to receive an advisory opinion, the staff shall promptly acknowledge receipt of the request. Unless the opinion sought is under Section 112.3215, F.S., the person requesting the opinion shall also be provided with an authorization to sign and return to the Commission, authorizing the Commission to publish the person's name and that of an employee or appointee about whom the person is authorized to inquire when the opinion is published. In addition, the authorization shall provide for the signature of the person who initiated the request for the opinion, if different from the person requesting the opinion, authorizing the Commission to publish his or her name. The authorization shall state that unless consent is given, these names will not be published.

(3) If at any time after receipt of a request for an opinion the staff or any Commission member believes that additional relevant information is needed, the person requesting the opinion shall be notified and asked to furnish such additional information.

(4) Working drafts of advisory opinions shall be prepared by staff of the Commission, under the supervision of the Executive Director. The Executive Director shall approve the final working draft, or may have alternative working drafts prepared, as appropriate.

(5) When a working draft of the advisory opinion is completed and approved by the Executive Director, it shall be mailed to all Commission members at least ten (10) days prior to the next regularly scheduled meeting of the Commission. The advisory opinion shall be placed on the agenda of the next meeting for consideration by the Commission.

(6) The person requesting the opinion shall be mailed a copy of the working draft or drafts, together with notification of the time and place of the Commission meeting at which the advisory opinion will be agendaed for action, at least seven (7) days prior thereto. The person requesting the opinion shall be advised that the working draft or drafts are not final, and that any additional comments, legal memoranda, or further information relevant to the opinion should be submitted as promptly as possible, but no later than the day prior to the meeting when the advisory opinion will be considered. The person requesting the opinion shall also be advised that he or she may attend the meeting and be heard by the Commission with respect to the opinion.

(7) The person requesting an advisory opinion may not withdraw his request after copies of the working draft of the opinion have been sent to him and to Commission members except with the consent of the Commission for good cause shown. Any advisory opinion issued by the Commission subsequent to an attempted withdrawal of request shall be binding in accordance with Rule 34-6.008, F.A.C.

*Rulemaking Authority 112.322(9) FS. Law Implemented 112.3215(10), 112.322(3), 350.041(3), 350.043 FS. History--New 4-11-76, Amended 4-7-77, 9-21-77, 1-23-78, Formerly 34-6.06, Amended 8-7-94, 7-28-98.*

### **34-6.0065 Emergency Requests for Advisory Opinions.**

Except in emergency situations as defined in Rule 34-2.004, F.A.C. or for other good cause shown, no request for an advisory opinion shall be agendaed for Commission action at a public meeting if the request is received after the fifteenth day prior to the meeting. The decision of whether an emergency exists or whether good cause has been shown shall lie within the discretion of the Chairman and the Executive Director, who shall decide whether to agenda the request based upon a written statement from the person(s) requesting the opinion describing the facts and circumstances constituting an emergency or good cause.

*Rulemaking Authority 112.322(9) FS. Law Implemented 112.3215(10), 112.322(3), 350.041(3), 350.043 FS. History--New 4-21-83, Formerly 34-6.065, Amended 8-7-94.*

### **34-6.007 Consideration and Issuance of Advisory Opinions by the Commission; Reconsideration of Opinions.**

(1) The draft or drafts of the advisory opinion shall be considered as an agenda item by the Commission and adopted in full, amended, modified, or rejected. The Commission may take any other action necessary for the rendition of a full and accurate opinion, including, but not limited to, directions that further information be provided or that further research be undertaken.

(2) Advisory opinions approved by the Commission shall be issued bearing the date and number and be signed by the Chairman. The advisory opinion shall be mailed as soon as practicable to the person who requested the opinion.

(3) A person requesting an advisory opinion may request reconsideration of the opinion by filing with the Commission within 30 days from the date it is rendered a written statement setting forth material facts and circumstances which were not before the Commission in its deliberations on the opinion or which were misstated in the opinion. If the Commission finds that these facts and circumstances would alter the opinion, the Commission may order its staff to redraft the final opinion or to prepare a new working draft of the opinion for later consideration. If the Commission finds that these facts and circumstances would not alter the opinion, it shall deny the request for reconsideration and so notify the person requesting the opinion by letter.

*Rulemaking Authority 112.322(9) FS. Law Implemented 112.3215(10), 112.322(3), 350.041(3), 350.043 FS. History--New 4-11-76, Amended 9-21-77, 7-2-80, Formerly 34-6.07, Amended 8-7-94.*

### **34-6.008 Effect of an Advisory Opinion.**

Until amended or revoked, an advisory opinion relating to Part III, Chapter 112, F.S., or Article II, Section 8, Florida Constitution, shall be binding on the conduct of the officer, candidate, or employee who sought the opinion, or the person with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion. Advisory opinions relating to the provisions of Chapter 350, F.S., shall not be binding in this manner.

*Rulemaking Authority 112.322(9) FS. Law Implemented 112.3215(10), 112.322(3), 350.041(3), 350.043 FS. History--New 4-11-76, Amended 9-21-77, Formerly 34-6.08, Amended 8-7-94, 7-28-98.*

### **34-6.009 Publication of the Name of the Person Seeking the Advisory Opinion.**

Advisory opinions shall be published, but unless the opinion is rendered under Section 112.3215, F.S., the name of the person seeking the advisory opinion, the name of an employee or appointee about whom he or she is authorized to inquire, and the name of the person who initiated the request for the opinion, if different, shall not be published unless consent to the use of these names is received by the Commission.

*Rulemaking Authority 112.322(9) FS. Law Implemented 112.3215(10), 112.322(3), 350.041(3), 350.043 FS. History--New 4-11-76, Amended 1-23-78, Formerly 34-6.09, Amended 8-7-94, 7-28-98.*

### **34-6.010 Publication of Advisory Opinions.**

Advisory opinions shall be numbered sequentially and dated. The first two digits of the advisory opinion number shall be the last two digits of the year in which the opinion was rendered. Following the year shall be a dash and the number of the opinion. For example, the tenth opinion issued in 1978 will be 78-10, or CEO 78-10.

*Rulemaking Authority 112.322(9) FS. Law Implemented 112.3215(10), 112.322(3), 350.041(3), 350.043 FS. History--New 4-11-76, Amended 1-12-78, Formerly 34-6.10, Amended 8-7-94.*