

“Fla. Const. Art. 8 § 2

§ 2. Municipalities

(a) **Establishment. Municipalities may be established or abolished and their charters amended pursuant to general or special law.** When any municipality is abolished, provision shall be made for the protection of its creditors.

(b) **Powers.** Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

(c) **Annexation.** Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.”

The City of Fort Pierce City Charter provides the following regarding the

FORT PIERCE UTILITIES AUTHORITY:

"ARTICLE XII. - FORT PIERCE UTILITIES AUTHORITY[12]

Sec. 169. - Created; powers, duties, responsibilities generally; definitions.

(a) **There is hereby created and made a part of the government of the City of Fort Pierce a utilities authority to be known and designated as Fort Pierce Utilities Authority, City of Fort Pierce, Florida,** which shall be responsible for the development, production, purchase and distribution of all electricity, gas, water, sanitary sewer collection and disposal, and such other utility services as may be designated by resolution by the city commission. The authority shall have exclusive jurisdiction, control and management of the utilities of the city and all of its operations and facilities. The authority shall have all the powers and duties possessed by the city to construct, acquire, expand and operate utility systems, and to do any and all acts or things that are necessary, convenient or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economic and businesslike administration of the utility systems. **The authority shall operate as a separate unit of the city government;** and except as otherwise provided in this article, the authority shall be free from the jurisdiction, direction, and control of other city officers and of the city commission. The authority may sue or be sued in its own name. All damage claims arising from the operations of the authority and the utilities shall be the responsibility of and be liquidated by the authority from the appropriate funds of the utility systems.

(b) For the purposes of this article, unless otherwise designated or the context requires, the word "authority" shall mean the Fort Pierce Utilities Authority,

the word "**member**" shall mean a member of the Fort Pierce Utilities Authority, and the word "**city**" shall mean the City of Fort Pierce. (Ord. No. F-399, § 1, 4-24-72) (Emphasis, italics and underlining added)

Sec. 170. - Composition; qualifications, selection, terms of office, **removal** and compensation of **members**; vacancies; election and duties of officers; authority to adopt rules; required vote to act; quorum; meetings; execution of contracts, written instruments.

(a) **The authority shall consist of five (5) members, one (1) of whom shall be the mayor. In the discretion of the city commission, the city manager may serve as an ex officio member without vote, and whose term shall be set by the city commission.**

(b) The city commission shall, within fifteen (15) days upon this article becoming law, elect by a majority vote, four (4) citizens with such qualifications as are provided for herein, one of whom shall serve for one year, one of whom shall serve for two (2) years, one of whom shall serve for three (3) years, and one of whom shall serve for four (4) years, each of such terms to commence the first day of each new fiscal year. Thereafter, the term of office of each member shall be for four (4) years, but each elected member shall hold such office until his successor has qualified and been elected and furthermore, the city commission shall by a majority vote nominate and elect any successor to the present membership of the utilities authority and shall by a majority vote elect all new members of the authority. No member of the utilities authority shall serve more than two (2) consecutive terms.

(c) Any vacancy in the authority shall be filled for the unexpired term in the same manner as provided for appointment after the initial appointments. No vacancy in the authority shall impair the right of the remaining members to exercise all the powers of the authority.

(d) *Any member may be removed from office by the city commission for malfeasance, misfeasance or nonfeasance in office*, or upon conviction of a felony.

(e) No person shall be a member unless he shall be a qualified elector of the city. No person who holds any other public office or who is an employee of the city government or who has any business relationship with the authority other than as a consumer shall be a member, except the mayor and the ex officio member. A member ceasing to possess any of these qualifications shall be removed from his office forthwith by the city commission.

State Law reference— Code of ethics for public officers and employees, F.S. § 112.311 et seq.” (Emphasis, italics and underlining added)

It is worth noting that the “**State Law reference**” for the foregoing **Sec. 170** is the “...**Code of ethics for public officers and employees, F.S. § 112.311 et seq.**”

Section 112.311 is found in **PART III “CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES”** of **Chapter 112 of the Florida Statutes**, of which Sections 112.311, 112.312, 112.313 and 112.317 are relevant to the issues before the City Commission.

“TITLE X. PUBLIC OFFICERS, EMPLOYEES, AND RECORDS (CHAPTERS 110–123)

CHAPTER 112. PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS

PART I. CONDITIONS OF EMPLOYMENT; RETIREMENT; TRAVEL EXPENSES

PART II. INTERCHANGE OF PERSONNEL BETWEEN GOVERNMENTS

PART III. CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES

112.311. Legislative intent and declaration of policy

112.312. Definitions

112.3125. Dual public employment

112.313. Standards of conduct for public officers, employees of agencies, and local government attorneys

112.317. Penalties

**** (Emphasis and underlining added)

As seen above, Sections 112.311, 112.312, 112.313 and 112.317, are all included within “**PART III. CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES**” of **Chapter 112 of the Florida Statutes**.

In **section 112.311**, the Florida Legislature left no doubt that it was its intent in enacting **PART III** that in order for public officers to maintain the Public’s Trust, violators of the Florida Code of Ethics for Public Officers must be punished: a

“112.311. Legislative intent and declaration of policy

(1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

(2) It is also essential that government attract those citizens best qualified to serve. Thus, the 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 all other citizens, to acquire and retain private economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided.

(3) It is likewise essential that the people be free to seek redress of their grievances and express their opinions to all government officials on current issues and past or pending legislative and executive actions at every level of government. In order to preserve and maintain the integrity of the governmental process, it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions, either by direct communication with such officials or by solicitation of others to engage in such efforts, be regularly disclosed to the people.

(4) It is the intent of this act to implement these objectives of protecting the integrity of government and of facilitating the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service.

(5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

(6) *It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public.* They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.” (Emphasis, italics and underlining added)

The following definition of an “Agency” in Section 112.312 (2), Florida Statutes, includes the FORT PIERCE UTILITIES AUTHORITY as a “municipal governmental entity”:

“112.312. Definitions
As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

(2) “*Agency*” means *any* state, regional, county, local, or *municipal government entity of this state*, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; any public school, community college, or state university; or any special district as defined in s. 189.012.”
 **** (Emphasis, italics and underlining added)

And, the appointed members of the BOARD of the FORT PIERCE UTILITIES AUTHORITY are “public officers” as defined in section 112. 313(1) of the Florida Statutes:

 “(1) **Definition.**--As used in this section, unless the context otherwise requires, *the term “public officer” includes any person* elected or *appointed to hold office in any agency*, including any person serving on an advisory body.” (Emphasis, italics and underlining added)

And, **Section 112.313(6)** prohibits FPUA Board Members from misusing their public positions:

“(6) Misuse of public position.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.”

**** (Emphasis and italics added)

And, **section 112.317(1) (a) (2) and (3) (b) and (4)** provide the penalties for any violation of PART III:

112.317. Penalties

(1) Any violation of this part, including, but not limited to, failure to file disclosures required by this part or violation of any standard of conduct imposed by this part, or any violation of s. 8, Art. II of the State Constitution, in addition to any criminal penalty or other civil penalty involved, under applicable constitutional and statutory procedures, constitutes grounds for, and may be punished by, one or more of the following:

(a) In the case of a public officer:

2. Removal from office.

(2) In any case in which the commission finds a violation of this part or of s. 8, Art. II of the State Constitution and the proper disciplinary official or body under s. 112.324 imposes a civil penalty or restitution penalty, the Attorney General shall bring a civil action to recover such penalty. No defense may be raised in the civil action to enforce the civil penalty or order of restitution that could have been raised by judicial review of the administrative findings and recommendations of the commission by certiorari to the district court of appeal. The Attorney General shall collect any costs, attorney fees, expert witness fees, or other costs of collection incurred in bringing the action.

(3) The penalties prescribed in this part shall not be construed to limit or to conflict with:

(a) The power of either house of the Legislature to discipline its own members or impeach a public officer.

(b) The power of agencies to discipline officers or employees.

(4) Any violation of this part or of s. 8, Art. II of the State Constitution by a public officer constitutes malfeasance, misfeasance, or neglect of duty in office within the meaning of s. 7, Art. IV of the State Constitution.” (Emphasis, italics and underlining added)

In *Bent v. Ballantyne*, 368 So.2d 351, 353 (Fla. 1979), the Florida Supreme Court held that

“3 Malfeasance is defined as the commission of some act which is positively unlawful. BLACK'S LAW DICTIONARY 1109 (rev. 4th ed. 1968). Ground two alleges that the conduct described therein violated “city policy adopted July 26, 1977,” “the intent of the City Charter,” and “the legal authority relationship.” These allegations, even if true, do not constitute malfeasance because the conduct alleged is not prohibited under the laws of this state or the charter of New Smyrna Beach. The present case is therefore distinguishable from *Wolfson v. Work*, 326 So.2d 90 (Fla. 2d DCA 1976), where it was alleged that a city official violated an express prohibition in the city charter.”

**** (Emphasis, italics and underlining added)

Accord: Lucibella v. Joyce, 2015 WL 4151103, *2 (15th Judicial Circuit Court, Palm Beach County June 10th, 2015) (No. 502015CA003061XXXXMB), *citing with approval See Bent v. Ballantyne*, 368 So. 2d at 353.” Based upon the definition of “malfeasance” as meaning the commission of an act that is positively unlawful, an act of a FPUA Board member misusing his/her position in violation of section 112.313(6) would constitute “malfeasance” as would a violation of the “Sunshine Law” and subject the member to removal pursuant to subsection (d) (“(d) *Any member may be removed from office by the city commission for malfeasance, misfeasance or nonfeasance in office, or upon conviction of a felony.*”) of ARTICLE XII of the City’s Charter.