



OFFICE OF THE PRESIDENT

March 18, 2008

The Honorable J.D. Alexander  
Senator  
Room 412 Senate Office Building  
404 S. Monroe St.  
Tallahassee, FL 32399-1100

Dear Senator Alexander:

You ask substantially this question: does your interest in a distribution center and warehouse, which is close to a proposed CSX Transportation freight yard at Winter Haven and does some business with CSX, create a conflict of interest such that you must abstain from voting on legislation intended to further creation of the CSX yard?

**Short answer:** You are not prohibited from voting. Nor does any voting conflict of interest exist that would require you to file a conflict letter under s. 112.3143, Fla. Stat., and Senate Rule 1.39.

I understand the facts to be these: one of your business interests is Atlanticblue, a real estate management, acquisition, land development and agricultural organization based in Lake Wales. In January 2008, Atlanticblue acquired Phoenix Industries, a food warehouse and distribution operation in Winter Haven. CSX Transportation plans to build a large freight yard near Winter Haven. The yard is expected to grow into a major transportation hub. Currently, only two percent of Phoenix Industries' business is attributable to commerce with CSX.

One or more bills pending in the Legislature<sup>1</sup> may assist the development of the CSX project. You are concerned whether any benefit that might flow from the proposed freight yard to Phoenix Industries creates a voting conflict of interest for you.

Senate Rules and Florida statutes establish a high ethical standard for Senators:

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<sup>1</sup> I am informed that the Senate bill affecting CSX is SB 1666. There may be other measures pending in the House.

- Rule 1.35 states: “Every Senator shall conduct himself or herself to justify the confidence place in him or her by the people and, by personal example and admonition to colleagues, shall maintain the integrity and responsibility of his or her office.”
- Rule 1.36 states: “A Senator shall not accept anything that will improperly influence his or her official act, decision, or vote.”
- Rule 1.37 states: “A member of the Senate shall not allow his or her personal employment to impair his or her independence of judgment in the exercise of his or her official duties.”
- Rule 1.39 requires a Senator to disclose “any personal, private, or professional interest in a bill that would inure to the Senator’s special private gain or the special gain of any principal to whom the Senator is obligated.” Such disclosure shall be filed with the Senate Secretary.
- Sec. 112.313(7), Fla. Stat., states that no public officer shall “hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.”

At the same time, s. 112.3143(2), Fla. Stat., states, “No public officer is prohibited from voting in an official capacity on any matter.” If the officer votes on a matter “which the officer knows would inure to the special private gain or loss” of himself, any principal, relative or business associate, the officer must file a disclosure of that interest within 15 days. See also Senate Rule 1.39.

The Commission on Ethics defines “special private gain” to be a benefit that would arise “as a direct outcome of the vote.” CEO 94-14. Gains are “special” under s. 112.3143 in two circumstances. First, when a gain is remote, speculative or contingent on the happening of events, the commission has held that the gain does not create a voting conflict of interest. See CEOs 94-18, 01-8, 07-7 (no conflict where councilman is employed by supplier of fire truck manufacturer on vote to provide incentives to keep the manufacturer from relocating; effect remote given “amount of business between the manufacturer and the supplier, given that most of the supplier’s business does not come from the manufacturer and given that the supplier has both local and nonlocal competitors”), 06-8 (no voting conflict where city councilman voted on a city redevelopment project when he owned land near the proposed project), 06-20 (no conflict where a city commissioner voted on the creation of a judicial center to be located near property owned by her and her

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husband's companies), 05-2 (no conflict when a housing committee member voted on mobile home issues when he owned a mobile home park), 05-3 (no conflict when commissioner and his relatives owned parcels near a proposed road), 89-32 (no conflict where commissioner owned a restaurant near proposed development), 86-44 (no conflict where councilman owned property near proposed shopping center).

Second, if the class of entities affected by the proposed legislation is broad, the commission has held that "'special gain' will result only if there are circumstances unique to the officer under which he or she stands to gain more than the other members of the class." CEO 01-8. When the affected class is small, the commission said "we have concluded that the possibility of 'special gain' is much more likely." Id. See also CEO 07-22, 05-2 (no conflict when matter affected entire village, not merely the mobile home park owned by housing committee member).

Based on these authorities, I conclude first that you are not prohibited from voting on any measure affecting CSX Transportation. Section 112.3143(2) permits you to vote on any matter despite the existence or the appearance of a conflict.

Second, I conclude that no voting conflict of interest exists requiring you to file a conflict memorandum as required by s. 112.3143(2) and Senate Rule 1.39. Any benefit accruing to Phoenix Industries from the construction of the proposed CSX freight yard is too remote and speculative. This is particularly so in light of the small percentage of business Phoenix Industries derives from CSX. See CEO 07-7. Furthermore, any CSX legislation that facilitates construction of the freight yard necessarily will benefit a large class rather than a small one. Therefore, it does not appear as though any such legislation will give rise to a special private gain.

If you have any further questions, please let me know.

Sincerely,

Jason Vail  
Special Counsel