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COMMISSION ON ETHICS  
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March 14, 2013

Susan Horovitz Mauer  
Chair  
Florida Commission on Ethics  
3600 Maclay Boulevard South, Suite 201  
Tallahassee, FL 32312

RE: Request for Advisory Opinion

Dear Chair Mauer:

The purpose of this correspondence is to request an advisory opinion on behalf of Jeremy Ring, a member of The Florida Senate, regarding potential employment as a consultant to a business entity that, from time to time, may be affected by measures coming before The Florida Senate and its committees for a vote.

The factual context within which this request arises is as follows. Jeremy Ring is a member of The Florida Senate. He serves as the Chair of the Governmental Oversight and Accountability Committee and the Vice-Chair of the Appropriations Subcommittee on Finance and Taxation. He also serves as the member of several other committees in the Senate: Appropriations; the Appropriations Subcommittee on Transportation, Tourism and Economic Development; Commerce and Tourism; Judiciary; and Rules.

He is considering potential employment as a consultant Sterling Partners, which is a private equity and venture capital firm. The firm has investments in education,<sup>1</sup> healthcare,<sup>2</sup>

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<sup>1</sup> Ashworth College (secondary, post-secondary, and career-oriented accredited on-line education programs); Connections Academy (virtual schools under management contracts with state charter schools and school districts); Educate Online (personalized on-line instruction in conjunction with school districts and higher education institutions); Educate, Inc. (tutoring and supplemental education services); InfiLaw (consortium of ABA accredited for-profit law schools); Laureate International Universities (campus-based and on-line universities providing undergraduate and graduate degree programs); Leman International School - Chengdu (international K-12 school in Chengdu, China); Meritas (international K-12 preparatory schools); Platform Management Services (enrollment management and marketing services to career colleges and traditional universities); School of Rock (after school provider of instrument and vocal programs); Spartan College of Aeronautics and Technology (certificates, associate degrees and bachelor degrees in aviation related fields); Tribeca Flashpoint Media Arts Academy (associate degree program in film and broadcast, game and interactive media, recording arts, animation and visual effects, and graphic design and visual communication).

business services,<sup>3</sup> direct marketing,<sup>4</sup> specialty manufacturing and distribution,<sup>5</sup> and technology companies,<sup>6</sup> among others.<sup>7</sup> Pursuant to the contract, Senator Ring would identify potential business opportunities for specific subsidiary business entities and endeavor to market the services of those subsidiary business entities to potential customers. Potential public sector customers may include counties, municipalities, school districts, charter schools, water management districts, state universities, community colleges and state colleges, and special districts including hospital districts.

Senator Ring's understanding of the applicable provisions of the Code of Ethics is set forth below.

### **Representation Before State Agencies Prohibited**

Article II, Section 8(e), Florida Constitution, provides in relevant part:

No member of the Legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

It is Senator Ring's understanding that the Commission on Ethics, in interpreting this provision, has utilized the definition of the term "represent" as set forth in Section 112.312(22), Florida Statutes: "'Represent' or 'representation' means actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client."

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<sup>2</sup> Ameritox (laboratory and management tools for pain medication monitoring); Centerre (rehabilitation hospitals); First Choice Emergency Room (free-standing emergency rooms); Paradigm Management Services (provides catastrophic medical management services); Progressus Therapy (partners with school districts to identify their needs in occupational therapy, speech language, and physical therapy); Remedi SeniorCare (comprehensive pharmacy services, pharmacy consulting, and data management services to nursing homes, assisted living and continuing care retirement communities).

<sup>3</sup> Cornerstone Records Management (records management services, including document storage and retrieval, document shredding, medical release information, document imaging and data protection); Livingston International (customs brokerage, transportation, and integrated logistics services); SAVO (sales information software); SecureNet (provides payment processing technology).

<sup>4</sup> Avecra (association management software services).

<sup>5</sup> Continental Case (manufactures and installs sheet metal, shelves, and exterior facades for refrigerated cases in the grocery industry); Optimer (designs, manufactures, and distributes flame resistant fabrics and garments).

<sup>6</sup> Desert NDT (non-destructive testing services for pipelines and other infrastructure); GEM Mobile Treatment Services (quick response, mobile de-gassing and vapor control solutions, and wastewater treatment); I/O (designs, engineers, and delivers digital energy technology); MOSAID Technologies, Inc. (intellectual property management).

<sup>7</sup> Foundation Partners Group (funeral homes providing cremation and cemetery services); Prospect Mortgage (residential retail mortgage lender).

Further he understands that in CEO 82-33, the Commission advised that this provision would not be violated if a State Representative was employed by an insurance company under contract to a State agency, where the subject Representative's duties in the performance of the contract would not involve any contact with the members or staff of the agency. See also CEO 81-12. As interpreted and applied by the Commission, where any required contact with state agencies is undertaken by other officers or representatives of the corporation, no violation of this provision is indicated. See CEO 81-12; CEO 90-08. Furthermore, application of this provision is not affected were a member of the Legislature to hold leadership posts within the Legislature such as chairman of a committee. See CEO 81-12; CEO 90-08.

It is the intent to the parties that the employment contract include language specifically prohibiting Senator Ring from engaging in any representation of Sterling Partners or any of its subsidiary entities before any "state agency." In this context, Senator Ring whether state universities and the boards of trustees of state universities are "state agencies" for the purpose of Article II, Section 8(e), Florida Constitution.

### **Conflicting Employment or Contractual Relationship**

Section 112.313(7)(a), Florida Statutes, provides in relevant part:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business, with an agency of which he is an officer or employee . . .; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

Senator Ring understands that the first part of this provision would prohibit a member of the Legislature from being employed by, or having a contractual relationship with, a business entity which is subject to the regulation of the Legislature. Several of the various business entities which are subsidiaries of Sterling Partners, from time to time, are affected by measures which come before the Florida Legislature. The Commission has opined that such corporate entities are subject to the regulatory power of the Legislature. However, the Code of Ethics, in Section 112.313(7)(a)2., Florida Statutes, contains the following exemption from this provision for members of legislative bodies:

When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee shall not be prohibited by this subsection or be deemed a conflict.

He understands that although Section 112.313(7)(a)2., Florida Statutes, exempts from

Section 112.313(7)(a) conflicts of interest arising out of a regulatory relationship between a member's employer and the Legislature, the second part of Section 112.313(7)(a) further precludes a member of the Legislature from having employment or contractual relationship that would create a continuing or frequently recurring conflict of interest or that would impede the full and faithful discharge of your public duties as a Legislator. In this regard, the Commission has considered whether the appearance of representatives of the business entities before the Legislature, or the necessity to act on issues of interest to the various business entities, could create a conflict under the second part of Section 112.313(7)(a), Florida Statutes.

In CEO 89-29, the Commission considered whether a city commissioner could be employed by an organization that was expected to appear before his agency on a regular basis to advocate its position on a variety of issues. In that opinion, the Commission found that the commissioner's private employment was permissible so long as it did not encompass activities related to lobbying his agency, and the Commission specified the types of activities which we considered to be related to lobbying. The rationale of that advisory opinion was cited in CEO 98-08, prohibiting a member of the Legislature from engaging in lobbying activities personally and also in any activities related to lobbying. This would include not only actual contact with legislators through physical attendance at legislative meetings, submission of written materials, and personal contact with legislators in an effort to encourage the passage, defeat, or modification of any measure before the Legislature, as part of your employment responsibilities, but also directing the activities of those who will contact the Legislature, participating in setting the strategies of whom to contact and what to say, and assisting in preparing amendments to documents in support of the corporation's position. In other words, the Commission has expressed a view that a member's outside employment with the corporation should be completely separated from the lobbying activities of your employer.

It is intent of the parties to include language in the employment contract to specify the limitations on Senator Ring's involvement in the lobbying activities of the organization using language similar to the above paragraph. The parties to the contract believe this would avoid the appearance that there is any conflict created between Senator Ring's activities as a legislator and his employment with the corporation. Senator Ring understands that these restrictions would not preclude his participation in corporate activities leading to a decision to approach the Legislature concerning an issue. However, once such a decision is made, Senator Ring's employment would not include any activities related to accomplishing the goals of the corporation before the Legislature.

### **Voting Conflicts of Interest for State Officials**

Section 112.3143(2), Florida Statutes, provides:

No state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows

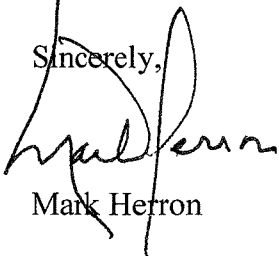
would inure to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

As a member of the Florida Legislature, Senator Ring is a state officer. It is his understanding that a member of the Legislature would be not be prohibited from voting upon, but would be required to file a memorandum of voting conflict, if he were to vote on a measure which inures to his special private gain or loss or which he knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate.

He understands that the Commission has advised that whether a measure inures to the "special" gain or loss of an officer or his principal will turn in part on the number of persons who stand to benefit from the measure. Where the class of persons is large, a "special" gain or loss will result only if there are circumstances unique to the officer or principal under which he or the principal would stand to gain or lose more than the other members of the affected class. CEO 11-01.<sup>8</sup> In CEO 81-12 the Commission opined that, if a member of the House voted upon general legislation which would affect all city and county housing authorities, there would be no "special" gain to a principal by whom he was retained, which would be the particular city housing authority which is represented by his law firm. However, if he were to vote upon special legislation, for example, a special legislative act relating only to his client and inuring to the benefit of that client, that legislation would inure to the special gain of a principal by whom he was retained. Whether a measure inures to the special private gain or loss must be analyzed on a case-by-case basis, based on all the known facts and circumstances. CEO 11-01.

I trust that this information is responsive to your request. If you have any additional questions or concerns, please let me know.

Sincerely,



Mark Herron

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<sup>8</sup> At present, the essential term or element of "special," necessary for a voting conflict, is not defined within the Code of Ethics. Thus, in administering Section 112.3143, Florida Statutes, the Commission has construed the meaning of the term, resulting in many decisions finding that the effect of a vote/measure on an officer, or on her relative or other listed person or entity, is not "special" when the covered person is a member of a sufficiently large group (class) affected by the measure. See *Gonzalez and Claypool, Voting Conflicts of Interest under Florida's Code of Ethics for Public Officers and Employees, XV Stetson Law Review 675 (1986)*.

## State University Discussions

Prior to entering into any negotiations with Sterling Partners regarding this consulting agreement, Senator Ring engaged in discussions with State University personnel about maximizing foreign student admissions that result in higher tuition fees than in-state student admissions. One of the entities in which Sterling Partners' invests is a provider of enrollment services to both public and private higher education institutions. Senator Ring was not compensated in any way for these discussions nor was there any agreement or future compensation, consideration or other thing of value tied to these discussions.