

BACKGROUND

Mr. James G. Johnson ("Mr. Johnson") was elected to Seminole City Council ("City Council") in March 2003 and has been the Mayor of the City of Seminole ("City") since March, 2007 (**app. A**). Mr. Johnson was also the Executive Director of the Greater Seminole Chamber of Commerce ("Chamber") from Sept 1, 2000 (**app. A**) to June 10, 2011 (**app. B**).

Mr. Johnson was the subject of a 2003 FCE complaint (03-065) which alleged several violations of FS 112. The FCE found no merit to any of the stated allegations, but ordered a supplemental investigation to see if Mr. Johnson had violated FS 112.3143(3)(a). In an "Order Finding probable cause", the FCE found probable cause that Mr. Johnson had violated (3)(a), but determined that it would be in the public interest to proceed "because the City Attorney (John M. Elias) failed to adequately advise the Respondent regarding the ethics issues which are the subject of this allegation". The Advocate agreed that there was probable cause.

According to the investigative report by staff, at issue in 03-065 ("the 2003 complaint") was whether Mr. Johnson was an officer of the Chamber or not. Mr. Johnson had executed two agreements with the City for the chamber, signing as "President" of the Chamber. Mr. Johnson's attorney Tim Schuler called that a "simple oversight" and promised that "more attention" would be paid in the future by Mr. Johnson to these matters.

Attached as **app. C.2008**, **app. C.2009** and **app. C.2010**, respectively, are pages 1 and 4 of the Chamber's federal tax returns. See page four of each appendix: Mr. Johnson signed all these federal tax returns as an "officer" of the Chamber. Right below the signature line it says "SIGNATURE OF OFFICER". There is every reason to believe that Mr. Johnson also signed the 2007 return as an officer of the Chamber.

The instructions for the signature block for both forms 990 and 990-EZ are identical:

"The return must be signed by the current president, vice president, treasurer, assistant treasurer, chief accounting officer, or other corporate officer (such as tax officer) who is authorized to sign as of the date this return is filed."

Mr. Johnson cannot have it both ways: if he is not an officer, then he repeatedly made false declarations on federal tax returns. If he is an officer, then he has violated FS 112. Given his FCE-documented carelessness in the past, the FCE should conclude that he was an officer in the Chamber when he signed the tax returns. Furthermore, the FCE should not accept "simple oversight" as an explanation this time around.

The complaints below are presented in numerical order as they occur in the statutes. They are not presented in order of gravity or priority.

In my view, the transgressions and past history are such that the FCE should expedite this complaint and move faster on this complaint, if at all possible.

Question #1 - Did Mr. Johnson violate FS 112.313 (3) "Doing business with one's own agency" from 2007 until June 2011 by holding employment at and being an officer of the Seminole Chamber while a Seminole City council member?

FS 112.313 (3) states that:

"DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest"

FS 112.312 "Definitions" shows that both the City and the City Council are an "agency". Mr. Johnson is a "public officer" as defined in FS 112.313 (1).

An issue noted by FCE staff in the 2003 ethics complaint 03-065 ("the 2003 complaint") was Mr. Johnson signing two agreements, in 2001 and 2002, as "President" of the Chamber. As mentioned in "Background", Mr. Johnson's attorney Tim Schuler claimed at that time that this was unintentional and a "simple oversight". Mr. Schuler further said that *"more attention [is now] paid to these matters by Mr. Johnson"*.

In the 2003 complaint, the advocate found no probable cause largely because Mr. Johnson was not an officer of the Chamber. As we have seen from the federal tax returns (**app. C**), Mr. Johnson has signed as an officer of the Chamber at least three times.

City Attorney Elias argued in the 2003 complaint that the City was not doing business with the Chamber because it was not purchasing any "goods or services" from the Chamber *for itself*. He argued that the services being purchased were "beneficial to the general public". Other than Mr. Elias' conclusory averment, we have no evidence showing that the purchase of those services from the Chamber are "beneficial" to the general public. Given that there is no contract governing the use of \$20,000 in funds, how does Mr. Elias know that it is beneficial when it isn't even spelled out what the Chamber is to do with the funds? In my view, the City Council *was* purchasing services for itself, specifically the support of the Chamber in all respects, including help in getting re-elected. The City Council was also purchasing silence from the Chamber, guaranteeing that no serious criticism would ever be leveled by the Chamber against City Council. See the last page of this complaint for more details on this.

What we do know for a fact is that the purchase indirectly benefited an officer of the vendor, that officer being Mr. Johnson, a City Council Member.

To argue (as they did in 2003) that City funds were not being used to pay Mr. Johnson (but rather other funds) is a very weak argument, given that money is fungible.

Question #2 - Did Mr. Johnson violate FS 112.313 (6) "Misuse of public position" from 2007 until June 2011 by holding employment at and being an officer of the Seminole Chamber while a Seminole City council member?

FS 112.313 (6) states that:

"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."

For over ten years, Mr. Johnson has asserted that he is not an officer of the Chamber, yet on the federal tax returns of the Chamber he asserts that he *is* an officer. In a previous ethics complaint, the same issue came up: is he an officer or is he not? Mr. Johnson said that whatever he did wrong at that time was a "simple oversight".

The findings of that previous complaint strongly suggested that the City Attorney had done a poor job, yet the Commission chose to keep him on.

At some point, you have to ask if these are honest mistakes or if all this is misuse of a public position. I respectfully ask the FCE to answer that question.

Question #3 - Did Mr. Johnson violate FS 112.313 (7)(a) from FY 2008 through FY 2011 by holding employment at and being an officer of the Seminole Chamber while a city council member?

I made a public records request of the clerk asking for "all contracts, agreements etc. related to the money provided to the Chamber for FY 2011, FY 2010, FY 2009 and FY 2008." In return, I received meeting minutes - no contracts. Please see **app. D**, which is an e-mail from City Manager Edmunds to me. The agreement changed from FY2009 to FY 2010, and for FY 2011 the money to the Chamber "became a grant". Mr. Edmunds' statements would seem to conflict with the results of the public records request. I will proceed on the assumption that the clerk was responsive to my public records request.

App. D is also relevant because it shows that the money given to the Chamber changed from one contract to a different contract to a grant. Thus the rationale used by the advocate in the 2003 complaint, that a pre-existing contract was merely renewed, does not apply here. The rationale that the Advocate relied on (CEO 97-11) at that time does not apply here.

FS 112.313 (7)(a) states that:

"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 or she is an officer or employee."

None of the exemptions listed under FS 112.313 (12) apply, or have been asserted by Mr. Johnson. As for the additional exemptions listed under FS 112.3143 (15) that are specific to 501(c) organizations, Mr. Johnson has failed to adhere to FS 112.3143 (15)(b) and (c), which requires that:

"(b) The officer has in no way participated in the agency's decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the agency, or otherwise; and

(c)The officer abstains from voting on any matter which may come before the agency involving the officer's employer, publicly states to the assembly the nature of the officer's interest in the matter from which he or she is abstaining, and files a written memorandum as provided in s. 112.3143."

Mr. Johnson properly abstained from discussions in FY 2008 and filed the required Form 8B "Memorandum of voting conflict". However, it was incomplete because it failed to disclose that he was an officer of the Chamber. In FY 2009, he abstained but did not file form 8B. When discussions took place about money to the Chamber in FY 2010 and FY 2011, Mr. Johnson neither abstained nor filed form 8B. Since Mr. Johnson participated in discussions and did not abstain from voting, he has forfeited any rights he may have had under the above exemption pertaining to 501(c)'s.

The commission should also note the unusually high percentage of the Chamber's total revenue that went to employee compensation. See the previously referenced federal tax returns form 990 in **app. C**. Note these numbers:

	Total revenues (line 9)	Salaries, etc. (line 12)	%-age salaries
2008	\$166,101	\$120,632	72.6%
2009	\$136,632	\$104,117	76.2%
2010	\$118,416	\$66,453	56.1%

I argue that Mr. Johnson's compensation would not have been possible without City funds flowing to the Chamber, especially not in calendar years 2008 and 2009. These numbers also raise a question as to whether the Chamber in those years existed to inure to the private benefit of Mr. Johnson, but that is a separate matter and one which I have written to the IRS about in asking them to revoke the chamber's tax-exempt status.

Attached to 03-065 "Report of Investigation" was a 1/9/2003 memo from City Attorney Elias. Under "Conclusions", he argued that "the City Commission is not purchasing.....goods or services from the Chamber". That issue was never addressed by the Advocate because the issue was made moot by the Advocate's reliance on 97-11. As I argued under question #1, the notion that the City was not "doing business" with the Chamber is not well-founded.

Given the amount of money given to the chamber by the city, given that the transaction involved no competitive bidding, given the changing nature of the monies provided to the Chamber, given all the facts and circumstances, I respectfully ask that the commission concludes that the City was "doing business" with the Chamber. I further respectfully request that the Commission find that Mr. Johnson did commit four violations of FS 112.313 (7)(a) in FY2008, FY 2009, FY 2010 and FY2011.

Question #4 - Did Mr. Johnson violate FS 112.3143 (3)(a) four times by voting to approve city budgets that contained substantial funds for a private corporation in which he was an officer?

FS 112.3143(3)(a) states the following:

"No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; *which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained*, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, 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". (my italicization above)

The budgets for these years contained substantial funds for the Chamber, approximately \$20,000 - \$22,000 per year. As evidence of this, I have attached the relevant pages from the approved City budgets for FY2008, FY2009, FY2010 and FY2011 as **app. E-FY2008**, **app. E-FY2009**, **app. E-FY2010** and **app. E-FY2011** respectively.

As we have seen above, Mr. Johnson was thus certainly retained by a corporate principal to whom the special private gain would inure. He was both an officer of this corporate principal, and an employee of it. In the cases when Mr. Johnson *did* abstain from voting, as required above, he submitted an incomplete form 8B which did not disclose the fact that he was an officer of the Chamber. In other cases, he did not abstain from voting and filed no form 8B. So whether he filed an 8B or not, Mr. Johnson violated FS 112.3143(3)(a)

Timothy Schuler, Esq., stated in an e-mail to me (**app. F**) that "Mr. Johnson's perceived conflict between his role as City Mayor and Chamber Executive Director has already been presented to the Florida Commission on Ethics and a favorable ruling issued". What Mr. Schuler is referring to is the 2003 ethics complaint (03-065). FCE staff have confirmed to me that they cannot find any other material than that complaint. Mr. Schuler represented Mr. Johnson in the 2003 complaint.

Attorney Schuler further stated this in his e-mail: "As Executive Director, he [Mr. Johnson] was not a member of the Board of Directors nor an Officer of the Chamber in accordance with the by-laws in place at that time." As we have seen from the tax returns in **app. C**, we can conclude that Mr. Johnson was in fact an officer. The facts call into question Mr. Johnson's truthfulness, or his ability to understand his obligations, or his ability to fulfill his obligations, or a combination of all three.

Also note that in Chambers's annual report filing with the State of Florida, Mr. Johnson was the registered agent for the Chamber for the entire time involved in this complaint.

FURTHER ARGUMENTS BY COMPLAINANT

Several times, I have asked Mr. Johnson and Mr. Elias to resign, including at the 3/27/2011 City Council meeting. I have spoken to Mr. Johnson on the phone and he said he will not resign because he says he did nothing wrong intentionally. I have given both Mr. Johnson and Mr. Elias every opportunity to resign in lieu of filing this complaint.

Every City Council member swears an oath of office which includes a statement that they will "abide by and support" FS 112. Therefore, Mr. Johnson was made aware of his obligations at least twice since 01/01/2007.

In this case, the same public office (Mr. Johnson) and the same City Attorney (Mr. Elias) are involved as Mr. Johnson votes on the same item (money for the Chamber) that was the subject of the 2003 supplemental investigation and finding. The Commission issued an order finding probable cause that read:

"The Commission on Ethics finds probable cause to believe the Respondent [Mr. Johnson] violated Section 112.3143(3)(a), Florida Statutes, by voting to renew the Business Assistance Partnership Agreement between the City and the Respondent's employer (the Chamber of Commerce)."

The advocate concurred with that finding. Given those facts, given all the other facts and circumstance, it makes the violation at hand all the more egregious. It is as if Mr. Johnson and Mr. Elias are saying "the law does not apply to us, we do as we please. Forget the law and forget you, John Q. Public".

FS 112.311 "Legislative intent and declaration of policy" item (5) states:

"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 subdivisionshall 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." (my italicization above)

In my view, Mr. Johnson did have a financial interest. Mr. Johnson's actions have not been in the public interest. "Legislative Intent" goes on to say:

"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,in the performance of their official duties." (my italicization above)

Mr. Johnson's actions do not strengthen the confidence of the people in their government, in fact his actions weaken it.

Note also the statement in **app. B** by Mr. Johnson's former employee Ms. Cain who said:

"I have enjoyed working with Jimmy Johnson tremendously and will stay in touch with him."

Of course Ms. Cain will say good things about and keep in touch with Mr. Johnson - her paycheck (funded in large part out of public funds) depends on being supportive of Mr. Johnson in his capacity as Mayor.

The larger picture is that the City gives money to the Chamber, which then can rely on the Chamber to be supportive of it in all respects. The City can be sure that the Chamber does not criticize city council and that they will be a faithful ally in getting those city council members re-elected. The matter of the distribution paid of political advertisements through the City has been the subject of newspaper reports, which is further evidence of a general unwillingness to comply with state laws, in this instance FS 104.31 "Political activities of state, county, and municipal officers and employees." There may be a broader and organizational unwillingness on the part of city council to comply with the law.

Although I am not required to, I hereby certify that in making this complaint, I have no interest in any personal gain, gain for any family, friend or even anybody that I can think of. I am not a resident of the City and can therefore not serve on the City Council. I am not an attorney, and therefore I can not serve as City attorney should the City Attorney leave or be fired. Neither I personally nor my corporation have ever done business with the City, bid on any contracts, nor do I anticipate ever doing so.

It is my understanding that the Commission can only consider violations under FS 112, so I leave out other violations of state and federal law by Mr. Johnson that I believe that I have found and reported to other authorities.

Given Mr. Johnson's numerous transgressions both now and in 2003, his oath of office and the legislative intent above, I respectfully ask that the commission recommend as discipline the removal of Mr. Johnson as a City Council member and/or heavy fines.

Thomas Rask