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MEMORANDUM

Date: February 29, 2016
To: Newly Appointed and Re-Appointed Members of County Boards
From: Mitchell O. Palmer, County Attorney *M. Palmer 2/29/16*
RE: Ethics, Records and Sunshine Law Overview

First, let me congratulate you on your appointment/re-appointment to one of Manatee County's standing or *ad hoc* boards, commissions or task forces. As a newly-appointed public official, there are certain laws that now apply to you and that you will need to keep in mind as you perform your duties for the County.

Sunshine Law

To ensure that public officials do not discuss the public's business 'behind closed doors' the Legislature adopted what is commonly known as the Sunshine Law.¹ This law requires members of any board or commission, including advisory boards and task forces, to refrain from conducting business outside of a duly-noticed public meeting. This prohibition means that you should take care to refrain from discussing any matter that is or is likely to come before your board or commission with any other member of the board or commission on which you sit outside of a noticed meeting. This includes in-person and telephonic conversations, as well as electronic communications with one or more other members of your board or commission via e mail, text message or social media exchanges. Additionally, if you are a member of a board or commission with quasi-judicial powers in areas such as land use or code enforcement, additional rules will apply to you concerning what evidence you may consider (including verbal communications interested persons may wish to have with you) and how and when that evidence is presented to you. If these rules (i.e., rules governing quasi-judicial proceedings) do apply to you, your board or commission will usually have an attorney from our Office who will make you aware of these

¹ See Florida Statute §286.011

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

added considerations. Finally, note that the County's staff will ensure that proper meeting notices are posted for your meetings and that appropriate meeting locations are arranged. Finally, members of the County's advisory boards, and particularly those who serve as Chairperson, should know that Florida's "right to speak" law requires that there be a call for any members of the public who may be present to comment upon a matter before the board votes on that matter.

The Public Records Act

Florida's Public Records Act provides the public a right to access records of state and local governments, as well as records of private entities acting on their behalf.² You should be aware that if a record falls within the definition of a "public record," it is subject to public disclosure, unless there is an express statutory exemption. A "public record" includes all materials, whether physical or electronic, made or received in connection with the transaction of official business by the County, including its advisory boards and task forces.³ Public records include draft documents as well as notes that you may create to perpetuate, communicate or formalize knowledge. As a result, you have a duty to ensure public records created or received by you are properly preserved and available for public inspection, if requested.

The County has processes for preserving public records within its control, including electronic communications that traverse the County's servers. However, if you use a personal email account, a social media account or service, or the text messaging feature on your mobile device to create or receive a public record, you will be personally responsible for ensuring such records are properly preserved and available to the public upon request. As a result, we recommend that you copy or forward emails or text messages regarding County business from your personal email system to a County account and that you avoid using social media, such as Twitter or Facebook, in connection with official County business. Finally, you should not assume a record is exempt from the Public Records Act without consulting with this Office. We are available to assist if you have any questions about whether a record meets the definition of a "public record" or whether a statutory exemption applies.

The Code of Ethics

Public officials, including members of advisory boards, are also required to comply with Florida's Code of Ethics for Public Officers and Employees.⁴ There are several portions of this law that apply to you. First, you are prohibited from soliciting or accepting any gift with the understanding it will influence your official actions. You may not accept anything of value from anyone where you know, or reasonably should know, that it was offered with the intent to influence your vote or actions as a public official. Next, you are required to refrain from using or attempting to use your office or any County resource to secure a special privilege, benefit, or exemption for yourself or others. Additionally, the law prohibits a public official from holding any employment or contractual relationship that will create a continuing or frequently recurring conflict between your private interests and the performance of your public duties. Furthermore, you are prohibited from using or disclosing information gained by reason of your official position and not available

² Chapter 119, Florida Statutes

³ Florida Statute § 119.011(12)

⁴ Found in Part III, Chapter 112, Florida Statutes

to members of the general public for your personal gain or benefit or the gain or benefit of any other person.⁵

The law also prohibits you from voting upon any matter that would inure to your special private gain or loss, or the special gain or loss of your employer, relative or business associate.⁶ If you have a voting conflict, there are specific disclosure requirements you must follow. County staff will assist you in such instances to ensure proper disclosure occurs. You should note, however, that absent a conflict being declared, you may not "abstain" from voting on a matter; and instead must cast a vote.⁷

You are also subject to the Code's provisions on gifts⁸ and honoraria⁹ from lobbyists (a lobbyist¹⁰ who has tried to influence your agency within the past 12 months, the principal or employer of that lobbyist, the lobbyist's firm, and partners of the lobbyist). There are two basic prohibitions: (1) you should not solicit any gift for personal benefit (regardless of value) from any of these donors; and (2) you should not accept a gift worth more than \$100 given directly or indirectly by any of these donors.¹¹ Honoraria and honorarium-event related expenses from these donors are limited and may be required to be disclosed.¹² Gifts worth more than \$100 that are not prohibited (and that are not reported elsewhere by law) should be disclosed on a quarterly basis.¹³ The only exception to this reporting requirement is for gifts from "relatives," a group that is broadly defined under the law.¹⁴ Gifts from relatives also are not prohibited, regardless of value. I have developed easy-to-follow flow charts concerning the gift rules and have attached same to this memorandum for your use.

Finally, members of certain boards or commissions possessing land planning or code enforcement authority are considered to be "reporting individuals" and as such are required to file a Form 1 limited financial disclosure statement annually.¹⁵ If you fall within this category, you will receive adequate notice and the proper form to execute from the Supervisor of Elections each year.

The ethics laws referenced herein as well as additional information about Florida's ethics laws are available from the Florida Commission on Ethics at: www.ethics.state.fl.us.

⁵ Florida Statute § 112.313 (2), (4), (6)-(8)

⁶ Florida Statute § 112.3143

⁷ Florida Statute § 286.012

⁸ Defined in Florida Statute § 112.312(12)

⁹ Defined in Florida Statute § 112.3149(1)

¹⁰ "Lobbyist" is defined in Florida Statute §§ 112.3148(1)(b) and 112.149(1)(d), to include anyone who was paid to influence governmental decision-making of your board or commission within the past 12 months. Therefore, the law applies not only to registered "lobbyists," but also to lawyers, salespeople, and anyone else who receives compensation for trying to influence any decisions of your board or commission.

¹¹ Gifts to governmental entities and charities are subject to particular standards. (see Sec. 112.3148(4) and (5), Fla. Stat.

¹² Florida Statute § 112.3149

¹³ Florida Statute § 112.3148(8)

¹⁴ Florida Statute § 112.312(21)

¹⁵ Florida Statute § 112.3145(2)(b)

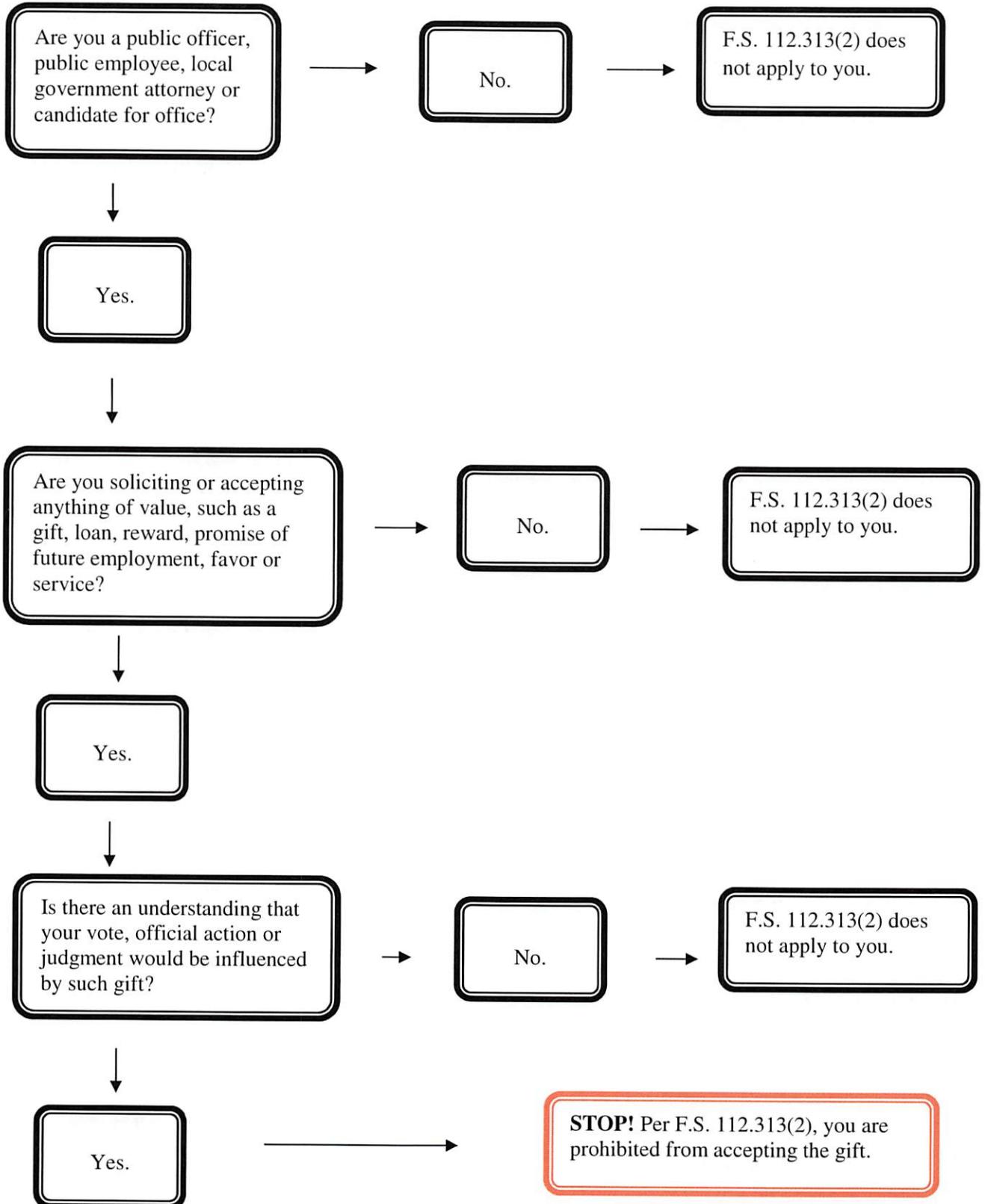
Conclusion

While this memorandum is intended to give you an overview of the various laws that now apply to you, it is not intended to be a comprehensive review of these laws, nor how they may apply to every given circumstance. Therefore, if you have any specific questions concerning how these laws apply to your actions as a County official, please feel free to contact our Office at the number listed on the first page of this memorandum and we will be happy to provide you any needed advice.

SOLICITATION AND ACCEPTANCE OF GIFTS

May 26, 2015

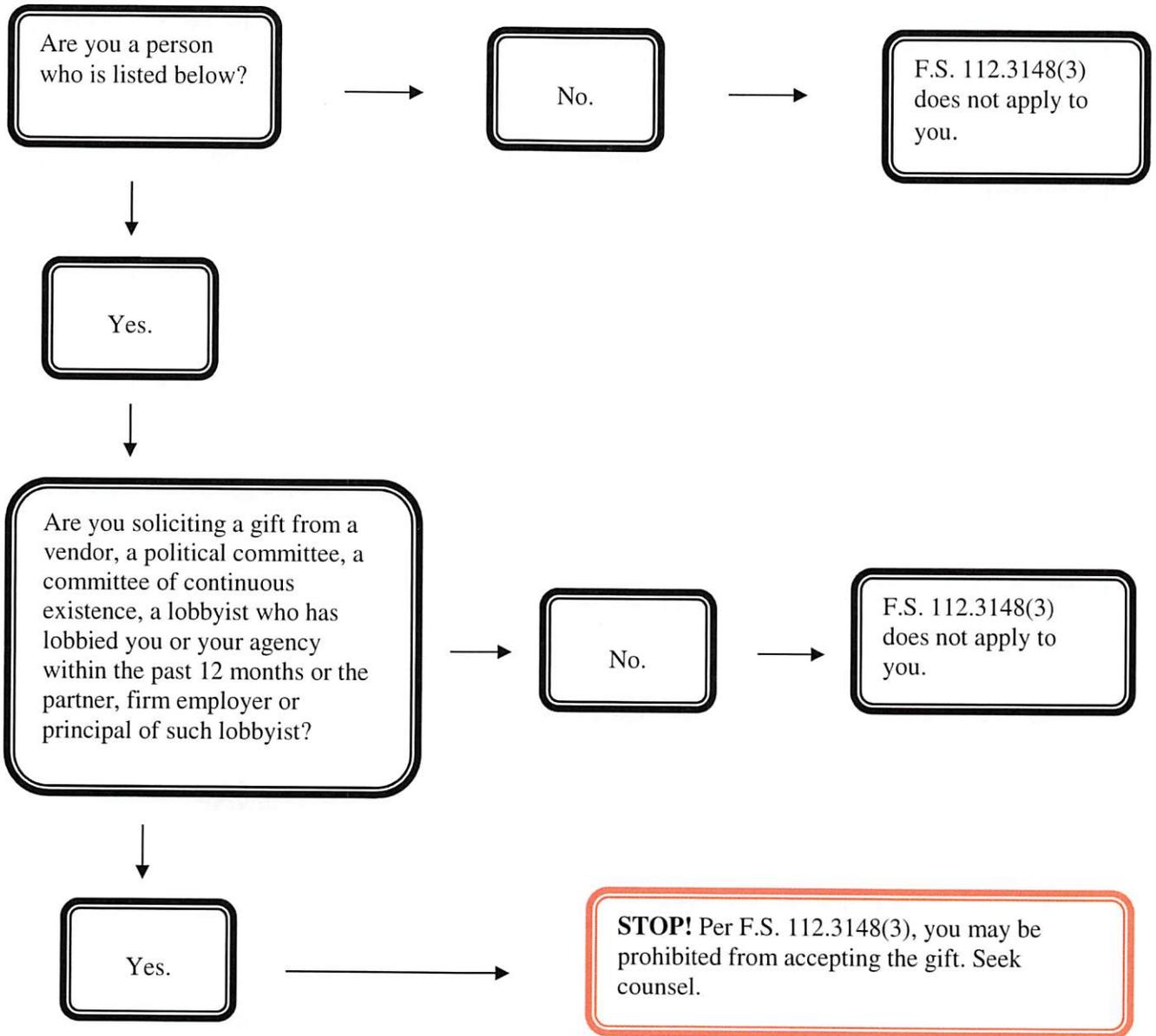
Flowchart Prepared by: Mitchell O. Palmer, County Attorney



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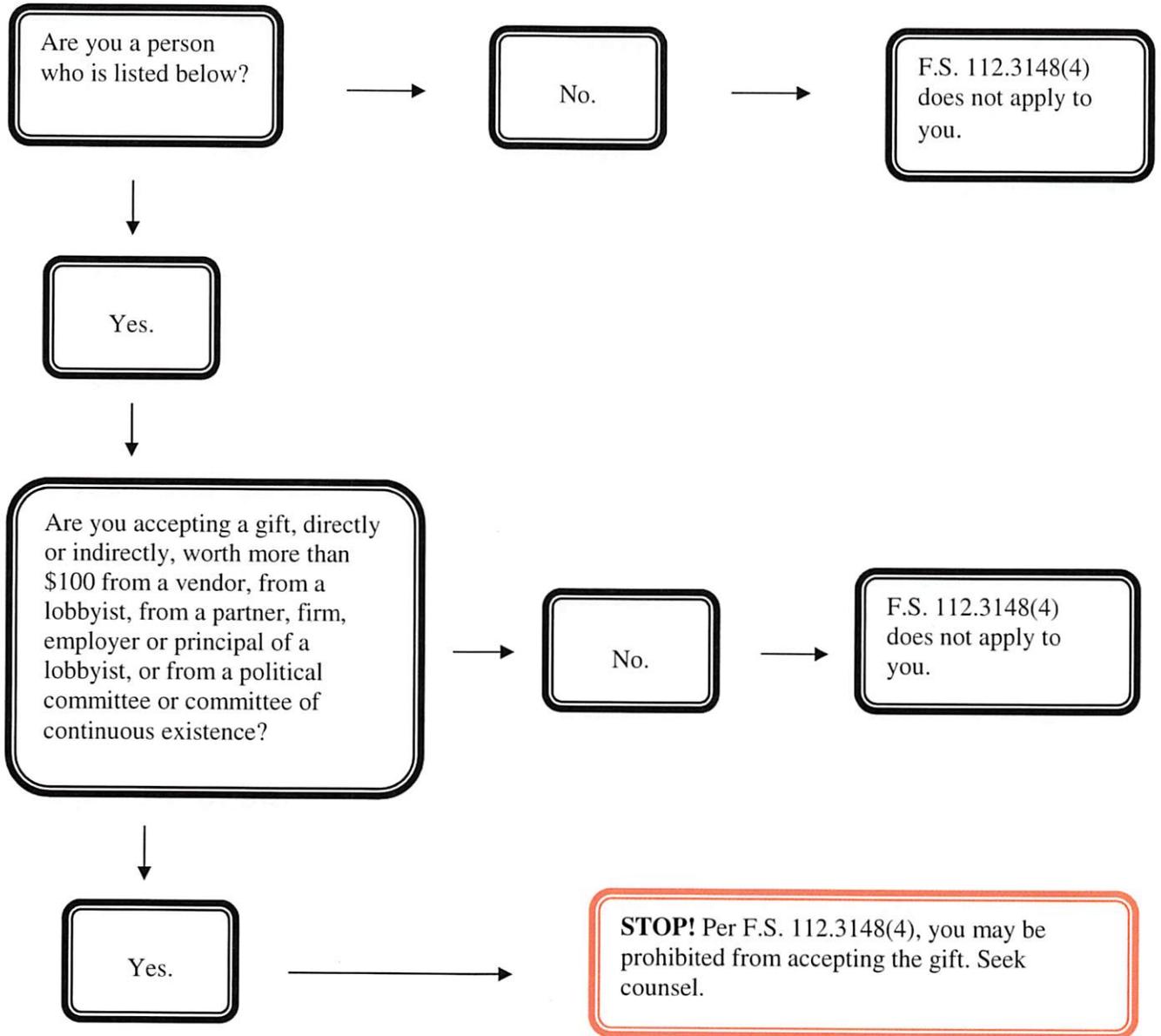


Affected persons: County commissioners, city commissioners, school board members, constitutional officers, code enforcement board members, planning commission members, pension board members, mayors, county administrators, city managers, county and city attorneys, building officials, police chiefs fire chiefs, city clerks, school superintendents, candidates and candidates-elect for local office, and purchasing officials for local governments. Note that this not an exhaustive list; see F.S. 112.3145.

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