



RICK SCOTT
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Office of the Governor

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August 9, 2013

State of Florida Commission on Ethics
c/o Virilindia Doss, Executive Director
325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303

**RE: Governor Richard L. Scott - Notice and
Request for Advisory Opinion**

Dear Commissioners:

Request is hereby made on behalf of Governor Richard L. Scott for an advisory opinion confirming that the previously issued advisory opinion, CEO 11-05, dated May 18, 2011, relating to the Governor's blind trust, continues to be binding and effective under new legislation enacted by the Florida Legislature authorizing qualified blind trusts. Section 112.31425, Florida Statutes.

Background

At the beginning of his administration, Governor Scott created a blind trust to which he transferred substantially all of his financial assets. That trust was modeled on the blind trust of the federal Office of Government Ethics, and on prior legislative proposals to recognize such trusts under Florida law. The purpose of the trust arrangement was to preclude any appearance of a conflict of interest between the Governor's financial assets and his duties as Governor. Because of the absence of authority in Florida on blind trusts, the Governor, through his personal attorneys, requested an advisory opinion from the Commission on Ethics.

On May 18, 2011, the Commission issued its Ethics Opinion 11-05. The Summary of that opinion states as follows:

"Under the circumstances presented, no prohibited conflict of interest exists where the Governor has invested in companies and investment funds that indirectly own Florida-based or Florida-regulated entities. In addition, no prohibited conflict of interest would be created were the Governor to place his investment assets

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in a blind trust, with the trust placing most of the investment assets into discretionary accounts that will be managed by licensed and regulated investment advisors who will have the discretion to invest, divest, and reinvest assets, even if an advisor were to invest in a Florida company in which the Governor would be prohibited from directly owning an interest.”

On May 1, 2013, the Governor signed into law Florida Ch 2013-36. Among other provisions, it enacted a new section 112.31425, recognizing qualified blind trusts. In general, the section provides that if a public official holds a beneficial interest in a qualified blind trust as it is described, the public official does not have a conflict of interest or voting conflict of interest with regard to matters pertaining to that interest.

Some of the key provisions of the statute are as follows:

- Management of the trust must be in the complete discretion of the trustee without consulting or notifying the public official.
- The public official cannot have any control over or attempt to influence decisions regarding the management of the assets in the blind trust.
- Communications between the public official and the trustee are strictly limited. In general, the trustee is not to provide information concerning the investments or income of the trust, except in limited circumstances, such as relating to the preparation of necessary tax returns.
- The trustee must be a bank, a trust company, an institutional investment advisor, or certain professional individuals. Certain persons are prohibited from serving as trustee or manager, such as family members or business associates.
- Under subsection (6)(d), within five days after the trust agreement is signed, the public officer must file with the Commission a notice stating (1) the date of the agreement; (2) the name and address of the trustee; (3) an acknowledgement by the trustee that he or she has agreed to serve; (4) a certification by the trustee on a form prescribed by the Commission that the trust meets the requirements of the statute, or in lieu of such certification, a copy of the trust agreement; and (5) a list of assets placed in the trust that the public official would be required to disclose pursuant to statute.

Notice

It is not apparent from the new legislation that any notice to the Commission as specified above is required by a blind trust in existence as of the effective date of the legislation, and which trust the Commission had previously approved. Obviously, it is not possible for a pre-

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existing trust to meet the five day notice filing deadline. Moreover, the Commission has not issued any guidance on the question or issued any prescribed form for certification by the trustee. The Commission and the staff were given detailed information about the Governor's blind trust during the 2011 advisory opinion process. Nevertheless, to avoid any question about compliance with the new law, the Governor hereby attaches as Exhibit A, Notice of Blind Trust of Governor Richard L. Scott, along with an Acknowledgement and Certification executed by the trustee (Exhibit A-1), and a list of assets placed in the trust on its creation (Exhibit A-2). These documents provide all the information and representations to the Commission called for by the statute.

Request for Advisory Opinion

The transmittal letter of May 18, 2011 from the then Executive Director of the Commission on Ethics conveying advisory opinion CEO 11-05 stated: "This opinion, until amended or revoked, is binding on the conduct of the officer, employee, or candidate who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion. [Section 112.322(3)(b), Florida Statutes]"

We believe that, with the filing of this notice (and its exhibits), there can be no question but that the previously approved blind trust is in compliance with the new statute, and, in accordance with the above statement, the Governor may continue to rely on advisory opinion CEO 11-05. Accordingly, we request an advisory opinion from the Commission so confirming that the opinion is still effective and the blind trust is in compliance with the new statute.

We appreciate your attention to this, and if you have any questions or require additional information, please let us know.

Respectfully Submitted,

Peter Antonacci
General Counsel

James T. Fuller
Williams & Connolly LLP

Attorneys for Governor Richard L. Scott

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