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**From:** Hyde, Kevin E. [KHyde@foley.com]  
**Sent:** 7/11/2019 6:24:09 PM  
**To:** Ware, Dabney D. [DWare@foley.com]  
**Subject:** Re: Follow up after review of opinions from Ethics Commission

We have been debating the 215.425 statute all day.

Sent from my iPhone

On Jul 11, 2019, at 5:48 PM, Ware, Dabney D. <[DWare@foley.com](mailto:DWare@foley.com)> wrote:

Kevin, I don't see anything separate from looking at opinions of the Ethics Commission - or at least not with the information I currently understand.

The memorandum from the City referenced a section dealing with misuse of position. Most of the decisions I reviewed involved some concern about self-dealing or nepotism - usually a vote that could have some direct or indirect benefit to the person voting, or a family member. As I understand things here, neither of those is really a concern. And, even if there's a relationship to a JEA employee, if the person is getting the same benefit as all other JEA employees, I don't think there's a concern.

The city memo references incentives, but does not provide any detail on what that might be. With more detail, we could look at the ethics opinions again, but I don't expect anything to be much different. I would think the bigger obstacle is complying with the statutory requirements for extra compensation. In general, it would seem extra compensation for the entity value would meet the statutory requirements, but I can also envision an argument as to whether extra compensation based on the overall value of JEA meets the requirements of basing it on "work performance" and describing the performance standards necessary. The entity value would seem to me to be much broader, and impacted by much more than individual work performance - so I'm wondering how close the relationship to incentive and performance needs to be.

With that in mind, I'd have a bigger concern along the lines of the general fiduciary duties, not ethics - since I'm not aware of any personal benefit, direct or indirect. Is there an issue if the incentive is painted as an inappropriate use of sale proceeds or public funds - meant to persuade employees rather than be used for public good (and therefore a breach of some fiduciary duty)? I'd think that too is a stretch - but seems more plausible to me than an ethics issue.

***Dabney D. Ware***

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