CITY OF TALLAHASSEE INDEPENDENT ETHICS BOARD

AO 2021-03 – May 18, 2021

SOLICITATION OR ACCEPTANCE OF GIFTS ORD. NO.: 2-15

CITY EMPLOYEE RECEIVING GIFTS FROM CITY VENDORS AT BOOTHS AT CONFERENCES, COMPETING FOR DOOR PRIZES

To: Name withheld at person's request.

SUMMARY:

Pursuant to the City of Tallahassee Ethics Code, all gifts, regardless of value, solicited or accepted by a covered individual from a lobbyist or vendor are prohibited. The term "gift" is defined by state statute, and the term "covered individual" is defined within the Tallahassee Ethics Code. Pursuant to local definition, a "covered individual" means a public official, one required to file a Form One financial disclosure form, and a "procurement employee."

QUESTION 1:

Does a city employee violate the Tallahassee Ethics Code ban on solicitation and acceptance if he or she accepts gifts provided at a booth maintained by a city vendor at a conference?

Under the circumstances presented, this question depends on whether the city employee falls under the definition of "covered individual." If the inquirer is a "covered individual," the question is answered in the positive. If the inquirer is not a "covered individual," the question is answered in the negative.

The inquirer seeks advice on whether he or she may accept a gift provided by a city vendor at a booth maintained by that city vendor at a conference attended by the city employee.

The Tallahassee Ethics Code does not define the term "gift" but instead refers to state statute. The state ethics code defines the term as follows:

"Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days, including:

- 1. Real property.
- 2. The use of real property.

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- 3. Tangible or intangible personal property.
- 4. The use of tangible or intangible personal property.
- 5. A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin.
- 6. Forgiveness of an indebtedness.
- 7. Transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking.
- 8. Food or beverage.
- 9. Membership dues.
- 10. Entrance fees, admission fees, or tickets to events, performances, or facilities.
- 11. Plants, flowers, or floral arrangements.
- 12. Services provided by persons pursuant to a professional license or certificate.
- 13. Other personal services for which a fee is normally charged by the person providing the services.
- 14. Any other similar service or thing having an attributable value not already provided for in this section.

§ 112.312(12)(a), FLA. STAT. (2020).

Based on this definition, the so-called "tchotchke" that is commonly distributed at booths at conventions are likely small, inexpensive souvenirs or knickknacks; however, such items would fall within the definition of gift as they are tangible personal property given to the city employee.

Prior to December 2019, the Tallahassee Ethics Code permitted gifts not to exceed \$25.00. The code was amended to provide for an outright ban for all gifts, including such tchotchke which may have little value.

For purposes of this analysis, the tchotchke provided by city vendors at booths at conferences would fall within the definition of "gift." The next part of the analysis focuses on whether that gift can be accepted or solicited.

The Tallahassee Ethics Code prohibits "covered individuals" from soliciting or accepting gifts from city vendors. The applicable ordinance reads as follows:

No covered individual shall knowingly, directly or indirectly, accept or solicit a gift of any value from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lessee of city property, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the

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city, or from any potential vendor or lessee that is currently engaged in procurement or negotiations with the city or a bid protest.

§ 2-15(a), Tallahassee Code of Ordinances (2021).

The inquirer states that he or she is a city employee but does not specify the specific nature of his or her employment. As a result of the limited facts presented, it is not possible to provide clear guidance as to whether the described act would constitute a violation a local gift ban.

A "covered individual" is a legal term not found in the state ethics code but created by local ordinance. The term is defined as follows:

Covered individual means:

- (1) Each public official;
- (2) Each employee and each member of a city board, commission, or council who is required by F.S. § 112.3145, to file an annual financial disclosure, including any employee with purchasing authority exceeding \$35,000.00; and
- (3) Each employee who is a procurement employee. "Procurement employee" means any city employee who has participated in the preceding 12 months through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities, if the cost of such services or commodities exceeds or is expected to exceed \$10,000.00 in any fiscal year.

§ 2-4, Tallahassee Code of Ordinances (2021).

Accordingly, if the city employee is a "covered employee" as defined by the Tallahassee Ethics Code, the inquirer may not accept tchotchke or knickknacks from booths maintained by city vendors at conferences that he or she attends. If the city employee is not a "covered employee," the gift ban does not apply.

QUESTION 2:

May a city employee accept a door prize with a value in excess of \$100.00 at a conference that he or she attends?

Under the circumstances presented, this question depends on whether the city employee falls under the definition of "covered individual." If the inquirer is a "covered individual," the question is answered in the positive. If the inquirer is not a "covered individual," the question is answered in the negative.

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Based on the facts presented by the inquirer, this analysis cannot determine whether the city employee is a "covered employee or not and cannot determine whether the door prize is paid for by a lobbyist doing business before the city or by a city vendor.

If the city employee is not a "covered individual" as defined by the Tallahassee Ethics Code, the inquirer is not subject to the ban on acceptance or solicitation of gifts from lobbyists or city vendors. If the door prize is not paid for by a lobbyist or city vendor, the inquirer is also not subject to the local gift ban.

If the inquirer is a covered individual and the door prize is paid for by a lobbyist or city vendor, the acceptance of a door prize in the scenario presented would constitute a violation of the Tallahassee Ethics Code.

The Florida Commission on Ethics addressed this issue and held that tangible or intangible personal property awarded through door prizes did not constitute gifts under the applicable state statute. In a case involving Osceola County employees, the state held that a county employee did not violate the state gift ban when accepting a \$500 cash door prize at a seminar provided by an organization that employed persons to lobby the county commission. *See* CEO 91-69.

In its analysis, the Florida Commission relied on the fact that the seminar was open to the public, not specifically county employees whom the organization's lobbyists may seek to influence. Under state law, the gift ban requires a finding that the gift be given "based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby." § 112.313(2), FLA. STAT. (2020). Due to the randomness of the door prize, the Commission held that one could not presume that the intent of the award was to influence an official act or omission.

The Commission did, however, find a violation of the state ethics code under the prohibited gifts provisions, because the value exceeded \$100.00, and the statute did not require a finding of an understanding that the gift was intended to influence an official act or omission. See CEO 91-69, citing § 112.3148(3), FLA. STAT. (2020).

While the City of Tallahassee's gift ban is modeled after its state counterpart, it is more stringent and does not require any findings of intent by the donee of the gift. The elements of the violation are limited to (1) the actors involved, i.e., covered individuals and lobbyists or city vendors, and (2) the act of something of value being given to the covered individual.

As such, the local gift ban better resembles the prohibited gifts section of state statutes minus the \$100.00 limitation. In the case of Tallahassee's ordinance, the gift ban is absolute.

Accordingly, if the city employee is a "covered employee" as defined by the Tallahassee Ethics Code, the inquirer may not accept a door prize that is paid for by a lobbyist or city vendor. If the city employee is not a "covered employee," the gift ban does not apply regardless of who pays for the door prize. If the city employee is a "covered employee" but the door prize is not paid

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for by a lobbyist or city vendor, the gift ban does not apply, and the inquirer may accept the door prize.

ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on April 20, 2021, and RENDERED this Local day of May, 2021.

Carlos A. Rev. Chair

Tallahassee Independent Ethics Board

ATREST:

DWIGHT A. FLOYD

Independent Ethics Officer

APPROVED AS TO FORM:

JOHN LAURANCE REID

Board Counsel