

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2022-05 – October 18, 2022

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

**DINNER PROVIDED TO PUBLIC OFFICIAL AT CONFERENCE
AND PAID FOR BY CITY VENDOR**

*To: Dennis R. Sutton, CPA, CIA
Tallahassee Inspector General
Office of Inspector General
300 South Adams Street
Tallahassee, FL 32301*

SUMMARY:

Under the City of Tallahassee Ethics Code, a public official may not consume food and/or beverages at a dinner hosted and paid for by a city vendor, while the public official is engaged in personal time during a work-related conference when the cost of the meal is not covered by the cost of the conference.

QUESTION:

Does a public official violate the Tallahassee Ethics Code ban on solicitation and acceptance of a gift by accepting a free meal paid for by a city vendor during personal time while attending a conference sponsored by a city vendor when the meal in question is not included in the cost of the conference registration?

Under the circumstances presented, this question is answered in the affirmative as it applies to the inquirer.

The inquirer seeks advice on whether he is prohibited by the current Tallahassee Ethics Code from accepting a free meal paid for by a city vendor during personal time while attending a conference sponsored by a city vendor when the meal in question is not included in the cost of the conference registration. The conference is hosted by a company that currently does business with the City of Tallahassee.

In his capacity as the City Auditor, the inquirer also serves as the city's Inspector General. In these capacities, the Inspector General planned to attend a conference in Orlando, Florida, sponsored by the Florida Government Finance Officers Association, affiliated with the Florida League of Cities. According to the Inspector General, his office was invited by a group of private businesses to attend a dinner at Del Frisco's Double Eagle Steakhouse. Among the businesses sponsoring the dinner were (1) MSL CPAs & Advisors, a CPA firm engaged to audit the City's

financial statements, (2) PFM Financial Advisors LLC, a financial advisory currently engaged to assist the City with debt and financing matters, and (3) Bank of New York Mellon Trust Company, a bank currently serving as an escrow agent/paying agent on some of the City’s outstanding debt.

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 “public official” constitutes a “covered individual” and is thereby covered by the gift ban ordinance. The acceptance of a gift requires the individual to receive something of value

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 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* (2022).

A “covered individual” is a legal term not found in the state ethics code but is identified in 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* (2022).

The Inspector General serves in this capacity by way of his position of City Auditor, which a position appointed by the City Commission. The term “public official” includes elected officials and their staff as well as appointed officials. The applicable ordinance reads as follows:

Public official means members of the city commission and commission-appointed aides, mayor and mayor's appointed assistants and aides, city manager, city attorney, city auditor, city treasurer-clerk, members appointed by the city commission to serve on any advisory, quasi-judicial, or any other board, commission or committee of the city

Id.

As the inquirer is a “public official,” this analysis need not consider the other two definitions of “covered individuals.”

The term “gift” is defined in the state ethics code and means:

“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.
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. (2022) (*emphasis added*).

The definition also includes exceptions; however, no exceptions apply to the facts as presented in this case.

While differing from the facts presented in this inquiry, numerous cases before the Florida Commission on Ethics have opined that gifts provided directly to governmental entities for the benefit of a public official or employee would not constitute a gift to that public official or employee. Specifically, when a covered individual receives something of value, such as registration, travel, lodging, or meals, from his or her governmental agency and then the agency receives reimbursement from a third party, the covered individual has not violated the Tallahassee Ethics Code's prohibition against gifts.¹ This is not the case as presented here.

Accordingly, under the circumstances described above, this Board finds that the act of a the Inspector General accepting a free meal paid for by a city vendor violates the ban on solicitation or acceptance of gifts under the Tallahassee Ethics Code.


ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on October 18, 2022, and **RENDERED** this 18th day of October 2022.

APPROVED:


Carlos Rey (Oct 18, 2022 16:41 EDT)

Carlos A. Rey, Chair
Tallahassee Independent Ethics Board

ATTEST:



DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:


Law Office of John Reid PLLC (Oct 19, 2022 09:21 EDT)

JOHN LAURANCE REID
Board Counsel

¹ See CEO 91-21 (supervisor of elections did not receive a gift when the county paid for his travel to visit a voting machine manufacturer and the manufacturer subsequently reimbursed the county for expenses); see also CEO 92-12 (Florida Public Service Commissioner did not receive a gift, honorarium, or honorarium-related expenses when he traveled at public expense to speak at a conference and where the sponsor later reimbursed the PSC for his expenses); see also CEO 07-3 (state employees did not receive a gift when a state agency received discounted conference registration rates and then designated which employees would attend); see also CEO 08-26 (state employee did not receive a gift when he or she traveled at state agency's expense and the organization who is the principal of an executive branch lobbyist reimbursed the agency); see also CEO 13-3 (monetary donations made to a government-maintained fund used to pay for official travel by public officials did not constitute gifts to the public officials).












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Final Audit Report

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