CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD

AO 2021-02 – May 18, 2021

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

SOCIAL RELATIONSHIPS BETWEEN COVERED INDIVIDUAL/PROCUREMENT EMPLOYEE AND CITY VENDORS

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 "procurement employee" 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.

QUESTION:

Does a city employee engaged in procurement for the city violate the Tallahassee Ethics Code ban on solicitation and acceptance if he or she attends social functions with city vendors but pays for his or her own expenses?

Under the circumstances presented, this question is answered in the negative.

The inquirer seeks advice on whether he or she may attend social gathering with city vendors under the current Tallahassee Ethics Code. According to the employee, he or she has participated in a procurement process involving the goods or services valued at an excess of $10,000 during the preceding 12 months. The employee further states that he or she attended "an external class" that was also attended by city vendors. The employee states that occasionally he or she would join city vendors to "get together to fellowship." The employee also states that he or she does not accept anything of value from the city vendors, except their company, claiming to pay for his or her own meals and never exchanging tangible property.

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* (2021).

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* (2021).

The inquirer cited the ordinance exactly as it appears in local ordinance and admitted to falling within the meaning of "procurement employee."

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. (2020).

The definition also includes exceptions, which are not applicable to this analysis.

The inquirer clearly states that food and beverages are consumed during the social gatherings but claims that he or she pays for his or her own items. If the city vendor were to pay for said items, the ordinance would be violated. This is not the case. Here, the facts as presented by the inquirer clearly state that the parties are not providing anything of value to the other.

One could argue that the city employee enjoys some type of incidental personal benefit by associating with the city vendor. No facts were presented by the inquirer that would lead to this conclusion; however, even if allegations were included, such a personal gain would not rise to the level of constituting a violation of the "gift ban."

In a case involving the Public Service Commission (PSC), a commissioner sought an advisory opinion from the Florida Commission on Ethics as to whether, *inter alia*, he and his wife could attend social events with a couple, of whom the husband was an attorney representing an intervenor before the PSC. In addition to citing conflict of interest statutes not applicable to this case, the Florida Commission on Ethics held that engaging in social relationships with those doing business before the PSC did not constitute a violation of the state's gift ban. The opinion stressed, however, that this advice is contingent on the commissioner not accepting anything of value from the individual. *See* CEO 10-9.

Accordingly, under the circumstances described above, this Board finds that the act of a city procurement employee attending social gatherings with a city vendor where nothing of value is conveyed, directly or indirectly, from the city vendor to the procurement employee does not violate the ban on solicitation or acceptance of gifts under the Tallahassee Ethics Code exists.

ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on April 20, 2021, and **RENDERED** this 18th day of May, 2021.

APPROVED:

Carlos A. Rey, Chair
Tallahassee Independent Ethics Board

ATTEST:

DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:

JOHN LAURANCE REID
Board Counsel