

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2023-01 – March 21, 2023

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

**CONFLICT OF INTEREST/MISUSE OF PUBLIC POSITION
ORD. NO.: 2-8**

**MAY A CITY EMPLOYEE ACCEPT FREE ADMISSION, TRAVEL,
AND LODGING TO A CONFERENCE HELD BY A CITY VENDOR IF
EMPLOYEE IS PRESENTING AT THE CONFERENCE**

**MAY A CITY EMPLOYEE APPEAR IN A PROMOTIONAL VIDEO
PREPARED BY AND FOR THE BENEFIT OF A CITY VENDOR**

*To: Major Jeff Mahoney #135
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Operational Support Bureau
Tactical Apprehension and Control Team Commander
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SUMMARY #1:

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. While the City’s gift prohibition only applies to “covered individuals,” city employees are subject to and may be restricted from soliciting and accepting certain gifts under state laws and city policies.

QUESTION #1:

Does a city employee who has been invited to be a presenter at a conference held by a city vendor violate the Tallahassee Ethics Code ban on solicitation and acceptance of a gift by accepting free admission to the conference as well as airfare and lodging to attend the conference?

The inquirer does not specify whether the city employee would be a “covered individual,” as defined by local ordinance. The result is the same for both groups.

In the case where the city employee would be a “covered individual,” this question is answered in the negative.

In the case where the city employee would not be a “covered individual,” this question is also answered in the negative.

Based on the scenarios presented, both groups, covered individuals and other city employees, should consult with the City Attorney’s office. Although the acceptance of transportation, lodging, and registration fees would not violate the Tallahassee Ethics Code, there are other concerns under state statutes and city policies that should be considered.

The inquirer seeks advice on whether city employees under his supervision are prohibited by the current Tallahassee Ethics Code from accepting free admission, transportation, and lodging to a conference sponsored by Axon.

Axon’s Accelerate Conference will be held in Phoenix, AZ during the weekend of April 11-14, 2023, and the company invited members of the Tallahassee Police Department to speak on a panel regarding “respond/voice comms.” In exchange for their service on the panel, Axon has offered to provide free admission to the conference as well as free airfare and lodging.

The company Axon is a city vendor that provides body cameras used by the city’s police department. The company has praised the Tallahassee Police Department’s use of these cameras in cases involving mentally disturbed suspects, so the company wishes for city representatives to speak at their conference.

Specifically, the police department has used body cameras in a way where police can approach a suspect showing evidence of being mentally disturbed while a mental health professional observes the interaction from a distance via the video connection. The mental health professional is then able to provide advice to law enforcement on how best to deescalate the interaction without unnecessarily exposing the mental health professional to what could become a dangerous situation. According to Axon, the City of Tallahassee is the first jurisdiction to use their hardware in such a manner, and the company hopes that it could become a model for the nation’s law enforcement agencies.

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* (2023).

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* (2023).

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).

The definition also includes exceptions, of which one is applicable. The statute states that a gift does not include an “honorarium or an expense related to an honorarium event paid to a person or the person’s spouse.” § 112.312(12)(b)3., FLA. STAT. (2022).

The above exception does not clarify what constitutes an “honorarium;” however, the term is defined in a subsequent section and corresponding agency rules. Furthermore, the subsequent statute establishes a prohibition that would apply in the case of a “covered individual.”

Pursuant to Florida law, a “reporting individual or procurement employee is prohibited from knowingly accepting an honorarium ... from a vendor doing business with the ... procurement employee’s agency.” § 112.3149(3), FLA. STAT. (2022). The terms “reporting individual,” which includes any employee required to file a limited public disclosure of his or her financial interests (state Form 1), and “procurement employee” together meet the definition of “covered individuals” as defined in the Tallahassee Ethics Code.

An “honorarium” is further defined as “a payment of money or anything of value, directly or indirectly, to a reporting individual or procurement employee, or to any other person on his or her behalf” for a speech or writing, not to include a book. § 112.3149(1), FLA. STAT. (2022); *see also* FLA. ADMIN. CODE R. 34-13.220(1).

Both the statute and rule explicitly exclude expenses related to an honorarium event as honoraria themselves. The applicable statute reads as follows:

The term “honorarium” does not include ... the payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event, including any event or meeting registration fee, for a reporting individual or procurement employee or spouse.

§ 112.3149(1), FLA. STAT. (2022); *see also* FLA. ADMIN. CODE R. 34-13.220(2).

The statute and corresponding rule directly tie additional expenses to an “honorarium event.” The statute fails to define an “honorarium event;” however, it is defined in the Florida Commission on Ethics’ rules.

An “honorarium event” means a meeting or function, or a series of related meetings or functions such as a convention held over several days, where the reporting individual or procurement employee has been invited to make a speech, address, oration, or other oral presentation, as defined in Rule 34-13.220, F.A.C.

FLA. ADMIN. CODE R. 34-13.230.

In the scenario presented, the invited speakers will not be receiving an honorarium, or payment, for speaking at the conference. The absence of an honorarium, however, does not preclude the event from being defined as an honorarium event, thereby exempting these related expenses from the definition of a gift under the state ethics code.

The Florida Commission on Ethics has opined that expenses related to an event where an honorarium could be paid, even if it is not, would be enough to exclude the expenses from the definition of a gift. When an entity paid for actual and reasonable transportation, lodging, and food and beverage expenses related to an event on behalf of a city mayor and his wife and considering the city mayor was giving a speech at the event, the Commission opined that the expenses were neither an honorarium or gift but rather expenses related to an honorarium event. CEO 91-4.

Accordingly, under the circumstances described above, this Board finds that the act of a “covered individual” accepting free admission to a conference sponsored by a city vendor as well as free transportation and lodging to attend the conference would not violate the ban on solicitation or acceptance of gifts under the Tallahassee Ethics Code.¹ This conclusion does not address whether the acceptance of these expenses would violate city policy.

The findings of the Board differs when city employees are not “covered individuals.” As previously stated, the local prohibition on soliciting and accepting gifts from city vendors only applies to “covered individuals,” so all other city employees would not be banned under the Tallahassee Ethics Code from accepting the free conference registration, transportation, and lodging. The city employee, however, would still be bound by restrictions in state law that would prevent them from accepting these benefits.

Specifically, Florida law prohibits a reporting individual or procurement employee or any other person on his or her behalf from “knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual’s or procurement employee’s agency.” § 112.3148(5)(a), FLA. STAT. (2022).

¹ While not a requirement of the Tallahassee Ethics Code, a “covered individual” who receives expenses related to an honorarium event (transportation, lodging, and registration) from a city vendor must also file with the Florida Commission on Ethics a CE Form 10, Annual Disclosure of Gifts from Governmental Entities and Direct-Support Organizations and Honorarium Event Related Expenses. *See also* CEO 13-3.

Likely, state law also prohibits a city vendor from “giving, either directly or indirectly, a gift that has a value in excess of \$100 to the reporting individual or procurement employee or any other person on his or her behalf[.]” § 112.3148(5)(a), FLA. STAT. (2022).

While this advisory opinion does not speak to the permissibility of this gift under state law, the inquirer should consider this scenario before making any decision. Furthermore, the advisory opinion does not speak to any city policies that may prohibit such an action.

NOTE: 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.²

SUMMARY #2:

Pursuant to the City of Tallahassee Ethics Code, a city employee misuses his public position when he or she takes part in a promotional video produced by and on behalf of a city vendor when the participation in such a video is inconsistent with the proper performance of the city employee’s office and duties.

QUESTION #2:

Does a city employee violate the Tallahassee Ethics Code if he or she participates in a promotional video prepared by and for the benefit of a private company that does business with the City of Tallahassee?

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

The state ethics code prohibits employees of an agency, including a municipality, from misusing their public positions. Specifically, city employees are prohibited from “corruptly” using or attempting to use “his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege benefit, or exemption for himself, herself, or others.” § 112.313(6), FLA. STAT. (2022).

² 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).

For purposes of the state ethics code, the term “corruptly” is defined as an act or omission “done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.” § 112.312(9), FLA. STAT. (2022).

While the statute fails to define “wrongful intent” as used in the preceding definition, the courts have defined the term to mean when one has “acted with reasonable notice that [his or] her conduct was inconsistent with the proper performance of her public duties and would be a violation of the law or the code of ethics in part III of chapter 112.” *See Blackburn v. State*, 589 So. 2d 431, 434 (Fla. 1st DCA 1991).

Upon the recommendations of this Board, the Tallahassee City Commission did not include a “corruptly” standard in its misuse of public position ordinance. This omission distinguishes the municipal ethics code from state law and its corresponding case law. The ordinance, however, does require that it be shown that the action by the public official or employee is not consistent with the proper performance of his or her duties.

The Tallahassee Ethics Code prohibits city employees from misusing their public positions as follows:

No public official or employee of the city shall use or attempt to use their official position or any city property or resource which may be within their trust, or perform or fail to perform, their official duties, in a manner inconsistent with the proper performance of the official's or employee's office and which the official or employee knows or should know with the exercise of reasonable care will result in a special privilege, benefit, or exemption for the employee, official, or others.

§ 2-8, *Tallahassee Code of Ordinances* (2023).

The elements of this prohibition that must be answered in the affirmative in order to support a finding of a violation are that (1) the individual is using his or her official position, (2) the conduct is inconsistent with the proper performance of the employee’s duties, and (3) the conduct results in a benefit to another.

It is assumed that the city employees would not participate in the videos as laypersons, but rather in their official capacities. Even if the employees participated in the promotional videos on their own time, any use of their job titles and/or association with the City of Tallahassee would constitute a use of their official position and subject them to the prohibition of this ordinance.

The inquirer has not indicated or made the argument that the participation in advertising or promotional videos for private companies having a financial interest before the City would constitute activities consistent with the proper performance of these individuals’ work duties. This

Board, furthermore, cannot imagine a scenario where such outside work on behalf of a city vendor would fall within official work duties.

Furthermore, Axon would clearly result in a benefit by members of the Tallahassee Police Department appearing in their promotional video. The Tallahassee Police Department is a nationally respected law enforcement agency, and the endorsement of its products by these city employees would be a tremendous advantage to Axon at the detriment of their competitors.


ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on March 21, 2023, and **RENDERED** on Mar 24, 2023, *nunc pro tunc* the 21st day of March 2023.

APPROVED:


Carlos Rey (Mar 24, 2023 13:17 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 (Mar 24, 2023 13:19 EDT)

JOHN LAURANCE REID
Board Counsel