

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2022-03 – June 21, 2022

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

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

**MAY A CITY EMPLOYEE SOLICIT OR ACCEPT GOODS OR SERVICES ON
BEHALF OF THE CITY TO BE USED FOR A CHARITY**

*To: Ms. Kim Knight
Coordinator – Special Projects
City of Tallahassee – Electric & Gas Utility*

SUMMARY:

The inquirer is the Coordinator for Special Projects with the City of Tallahassee, Electric & Gas Utility. The inquirer has been tasked with coordinating the City's participation with the American Cancer Society's annual Relay for Life of Leon County. This year, the inquirer, as the special projects coordinator, will work with private businesses to obtain goods and services to be used by City for the benefit of a charity.

QUESTION 1:

Does the Special Projects Coordinator with the City of Tallahassee Electric & Gas Utility violate the municipal ethics code's ban on the solicitation and acceptance of gifts by seeking and receiving goods and services on behalf of the City for the purpose of using said goods and services towards the City's involvement with a local charity?

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

The inquirer seeks advice on whether she is prohibited by the current Tallahassee Ethics Code from soliciting and accepting goods and/or services from local businesses to be used by the City of Tallahassee through its participation in the American Cancer Society's Race For Life of Leon County. The inquirer may or may not take possession of said goods; however, she would do so on behalf of the City. At the time this request for an advisory opinion was made, the inquirer had not yet sought good or services, so it was not known the nature of the businesses solicited.

The Tallahassee Ethics Code prohibits covered individuals from soliciting or accepting gifts from city vendors, lessees of city property, or lobbyists. 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).

To determine a violation of this provision, the three (3) elements of the ordinance must be satisfied. First, the individual soliciting or accepting the goods or services must be a “covered individual,” as defined by local ordinance. Second, the goods or services accepted by the individual must satisfy the statutory definition of “gift.” And third, the business providing the goods or services must be a city vendor, lessee of city property, or lobbyist.

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 inquirer is not a public official, and she is not a city employee required to file a state Form 1 financial disclosure. Based on the information provided by the inquirer, it does not appear that she is a “procurement employee.” While she does not have purchasing power exceeding \$10,000 per fiscal year, the definition is drafted broadly enough to include those employees who influence any procurement decision or bid specifications. The undersigned cannot proclaim the inquirer is not a procurement employee without further investigation; however, if either of the latter two elements are answered in the negative, this question becomes moot.

The next step of the analysis is to determine whether the inquirer will receive a gift. 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[.]”

§ 112.312(12)(a), FLA. STAT. (2021).

Based on the facts provided by the inquirer, she will accept something of value simply as a conduit of her employer and that the recipient of the gift is in fact the City. Simply managing tangible property does not make the inquirer the recipient of the gift. The ordinance also prohibits the solicitation of gifts, but again, the gift must be for the covered individual, not the City, to run afoul of the Ethics Code.

The final element of the gift ordinance requires a finding of whether the business providing the good or service is a city vendor, or lessee of city property, or lobbyist. This information was never provided, so the undersigned cannot provide a finding as to the third element of the ordinance.

For a covered individual to violate the municipal ban on the solicitation or acceptance of gifts, all three elements of the ordinance must be satisfied. Based on the facts presented, the first element may or may not be satisfied, although it appears that the inquirer is not a covered individual, as defined by local ordinance. The undersigned lacks sufficient information to make any determination as to the third element. The second element, however, is clearly not satisfied by the facts presented.

As a result of the foregoing, the inquirer would not solicit or accept an unlawful gift if she were to seek goods or services on behalf of the City for its participation in the American Cancer Society’s Relay for Life of Leon County.

QUESTION 2:

Does the Special Projects Coordinator with the City of Tallahassee Electric & Gas Utility violate the municipal ethics code’s misuse of public position provision by soliciting and accepting goods and services on behalf of the City for the purpose of using said goods and services towards the City’s involvement with a local charity?

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

The state ethics code prohibits public officials from misusing their public positions. Specifically, public officials 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. (2021).

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. (2021).

While the statute fails to define “wrongful intent” as used in the preceding definition, the courts have defined the term to mean the public official “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 caselaw. The ordinance, however, does require that it be shown that the action by the public official or employee not be consistent with the proper performance of his or her duties.

On April 20, 2022, the Tallahassee City Commission most recently amended its ordinance prohibiting the misuse of public position. The new ordinance reads 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* (2022).

As previously stated, the inquirer is the Special Projects Coordinator with the City of Tallahassee Electric & Gas Utility, entrusted, *inter alia*, with coordinating events with local charities. The inquirer indicated that she has represented the City in its coordination with the American Cancer Society for prior events. The act of soliciting or accepting gifts on behalf of the City to be used by the City for the American Cancer Society’s Relay for Life of Leon County is consistent with the proper performance of her official duties.

Furthermore, the inquirer indicated that the goods or services acquired by her would be for the benefit of the City in its coordination with the American Cancer Society. Any benefit later passed along to the American Cancer Society would come from the City, not from the inquirer.

ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on June 21, 2022, and **RENDERED** this 29th day of June 2022.

APPROVED:



Carlos Rey (Jun 28, 2022 18:22 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 (Jun 29, 2022 11:54 EDT)

JOHN LAURANCE REID
Board Counsel












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Final Audit Report

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