

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2024-07 – October 15, 2024

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

*To: Mr. Jamal Simpson, PMP
Lieutenant, Communications Liaison
Tallahassee Fire Department
911 Easterwood Drive
Tallahassee, FL 32311*

SUMMARY:

Under the City of Tallahassee Ethics Code, a covered individual may accept free food and beverages from a coalition of non-profit and for-profit organizations when the meals are offered to all similarly situated employees and none of the groups are city vendors, lessees of city property, or lobbyists that appear before the city or employ such lobbyists.

QUESTION:

Does a covered individual violate the Tallahassee Ethics Code ban on solicitation or acceptance of a gift by accepting free food and beverages from non-profit and for-profit organizations that have no relationship with the City of Tallahassee and offer these meals to all similarly situated employees?

The question as it applies to the specific facts set forth is answered in the negative.

On September 16, 2024, a Lieutenant with the Tallahassee Fire Department contacted the Tallahassee Independent Ethics Office requesting an opinion on whether it would be advisable to continue with an event and/or activity planned for Friday, September 20, 2024.

BACKGROUND

A coalition of non-profit and for-profit organizations wish to host free lunch for city officials and employees with the Tallahassee Fire Department as well as for all first responders in Leon County and the surrounding communities. The meals are intended to be distributed at local stations. Following the distribution of the meals, the organizations' representatives wish to appear in photographs with first responders to be publicly disseminated, likely for marketing purposes. The organizations hosting the events are The America Project, Vote Your Vision, Armed Forces Brewing Company, and Big Country's BBQ & Deli.

The primary organization hosting the free lunches is The America Project. The America Project is a Florida-based 501(c)(4) non-profit organization that engages in education and

advocacy pertaining to election integrity and immigration policy. Vote Your Vision is a subsidiary of The America Project. Armed Forces Brewing Company is a craft brewery based out of Norfolk, Virginia, that often partners with The American Project and Vote Your Vision for such events. Big Country's BBQ & Deli is a local restaurant that will provide the meals.

RULE

The Tallahassee Ethics Code prohibits the acceptance or solicitation of gifts in some cases.

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* (2024).

ANALYSIS

For a violation of section 2-15 to be found, three elements of the prohibited act must be satisfied. Firstly, the individual accepting or soliciting the gift must be a "covered individual," as defined by local ordinance. Secondly, the gift or item accepted or solicited must have value and fall within the statutory definition. Thirdly, the donor of the gift must be either a vendor, lessee of city property, or lobbyist. For a violation to occur, all three elements must be met.

A covered individual is defined by local ordinance 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* (2024).

Based on the facts presented in the inquiry, it is not clear whether any of the recipients of the free meals will be covered individuals. It is possible and likely that the recipients will include city employees who are and are not covered individuals.

The Tallahassee Independent Ethics Board only has jurisdiction over Tallahassee officers and employees. Any first responders who may participate in this event and are employed by Leon County or neighboring governmental bodies are not subject to the restrictions of the Tallahassee Ethics Code.

For those first responders employed by the City of Tallahassee who do not meet the definition of a covered individual, he or she may participate in these activities and may consume food and beverages provided at no cost by the hosts of the events.

For those first responders employed by the City of Tallahassee who do meet the definition of a covered individual, the inquiry must continue to determine whether the third and final element is met.

The second element is likely not satisfied. The meals that will be provided are something of value; therefore, they would fall under the definition of gift unless they meet an explicit exclusion. If the meals are made available to similarly situated employees, the definition of gift would not be satisfied.

The local ethics code refers to the state's definition of a gift, which is 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.
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. (2024) (*emphasis added*).

In this case, the meals are intended for all first responders across Tallahassee and surrounding counties, and for city officials and employees, who would receive them equally as similarly situated employees. The Florida Commission on Ethics has previously found that benefits offered equally to similarly situated public employees generally do not constitute prohibited gifts.

In 1992, the Commission issued an opinion where teachers in Naples, Florida were permitted to have their personal automobiles serviced at the school district's vocational technical center at discounted prices compared to those offered to the general public. As it applies to the gift statute, the Commission held that no violation occurred, because, *inter alia*, the offer was extended to all teachers who were found to be similarly situated government employees or officials. *See* CEO 92-26 (June 5, 1992).

In another case, officials and employees with the Department of Revenue were offered discounts for cellular telephone service from a company that employed lobbyists to appear on its behalf before the Executive Branch. One of those lobbyists sent flyers to offices at the Department, offering a 15% discount off its regular prices for phone services. The flyer stated that the offer was made available to all government employees. The Commission found that Executive Branch agency officials and employees could accept the discount in part because the offer was made to all employees. *See* CEO 06-18 (Oct. 25, 2006).

In Martin County, the City of Stuart utilized the services of a local bank who in turn offered free checking accounts to all city employees. The Florida Commission on Ethics found that city employees could accept such an offer without violating the state's gift prohibition, focusing on the fact that the free checking accounts offer extended to all city employees. *See* CEO 77-114 (July 21, 1977).

Finally, the Commission also considered this exception to the gift definition when the offer was made to individuals who were similarly situated and not employed by the same governmental entity. In Broward County. The Port Director, Deputy Port Director, and Port Commissioners with the Port Everglades Authority sought to enjoy a cruise provided by a cruise line that paid tariffs to use the facilities at the Port. The cruise line offered discounts, not just to employees or officers of the Port, but to all persons associated with the travel industry. In this case, the Commission found

that these individuals would not receive a prohibited gift but rather a preferential or special rate publicly available to others in the travel industry. *See* CEO 89-31 (July 27, 1989).

In each case, the Commission confirmed that benefits available to similarly situated employees or widely offered within certain groups did not constitute prohibited gifts under the state ethics code. Based on these cases as applied to the facts as presented here, the meals intended for Tallahassee first responders would not be a gift as they are offered to all similarly situated employees and officials.

The final question of the analysis is whether the donor is a prohibited party, specifically a city vendor, lessee of city property, or a lobbyist appearing before the city, or their principal or employer. These parties are restricted from giving anything of value to covered individuals.

A preliminary check of the city vendor database showed no matches to any of the event hosts, so this condition is not met. Additionally, none of the host organizations operate on city property; all are based outside Tallahassee, with the only nearby business, Big Country's BBQ & Deli, located in Panacea, Wakulla County. Finally, a search of the city's lobbyist database showed no sponsors retained lobbyists before the city.

Therefore, the organizations sponsoring the event with Tallahassee firefighters and other first responders are not prohibited donors, so the third element is not met.

CONCLUSION

A violation of the gift prohibition ordinance requires that three elements be satisfied. Here, only one of the three is met when the individual is found to be a covered individual.

Accordingly, the events and/or activities where Tallahassee firefighters and other first responders would accept free food and drinks would not create an ethical conflict for city officials or employees classified as covered individuals.

While other considerations can be made by management as to the appropriateness or appearance of such events, the acceptance of free food and beverages from The America Project, Vote Your Vision, Armed Forces Brewing Company, and Big County BBQ & Deli would not constitute a violation of the Tallahassee Ethics Code.

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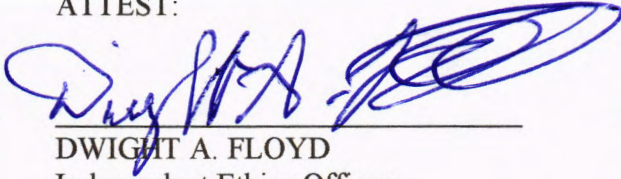
ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on October 15, 2024, and **RENDERED** this 15th day of October 2024.

APPROVED:



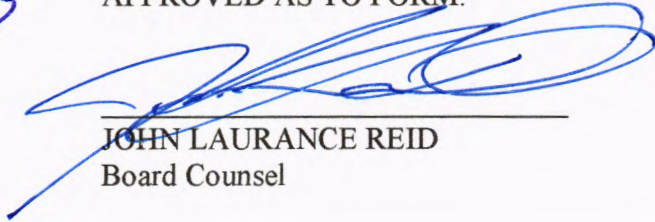
Kristen S. Costa, Chair
Tallahassee Independent Ethics Board

ATTEST:



DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:



JOHN LAURANCE REID
Board Counsel