

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2022-04 – August 16, 2022

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

PROCUREMENT EMPLOYEES RECEIVING DISCOUNTS FROM 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 “covered individual” means a public official, one required to file a Form One financial disclosure form, and a “procurement employee.”

QUESTION:

Does a city employee violate the Tallahassee Ethics Code ban on solicitation and acceptance of a gift if he or she receives a discount on rent at an apartment complex when the discount is provided to all city employees?

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

BACKGROUND:

The inquirer seeks advice on whether he or she may accept a discounted rate for rent at an apartment complex owned by Arbor Properties Development, Inc., or if such act would constitute a violation of the Tallahassee Ethics Code.

Arbor Properties Development, Inc., a/k/a Arbor Properties, Inc. is a foreign (out-of-state) profit corporation with a principal place of business in Tallahassee, Florida. The officers are in Montgomery, Alabama, and Tallahassee, Florida. Arbor Properties Development operates seven (7) properties in Tallahassee, Florida. According to public records, Arbor Properties Development is not a vendor of the City of Tallahassee and has not had a lobbyist appearing before the City of Tallahassee since 2017.

The inquirer is not a public official, as defined by local ordinance. Additionally, the inquirer did not indicate whether he or she is required to submit a state financial disclosure form (Form One) or whether he or she is a procurement employee, as defined by local ordinance. Absent this information, the undersigned cannot determine whether the inquirer is a covered individual under the Tallahassee Ethics Code.

RULE AND ANALYSIS:

The Tallahassee Ethics Code bars some public officials and city employees from soliciting and/or accepting gifts from specific donors. The applicable language 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), CODE OF GENERAL ORDINANCES, City of Tallahassee (2022).

The definitions section of local ordinance does not provide a definition for the term “gift,” but rather refers to the state statute’s definition as it may be amended from time to time. *See* § 2-4, CODE OF GENERAL ORDINANCES, City of Tallahassee (2022).

The state definition, in part, is as follows:

(a) “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), FLA. STAT. (2021) (*emphasis added*).

The definitions section continues to enumerate exclusions to the “gift” definition; however, an analysis of these exceptions is not necessary. The preceding definition explicitly provides that a preferential rate for services offered to all similarly situated government employees does not fall under the definition of gift.

The language in the ordinance is much stricter than its counterpart in state statutes, which requires some level of intent in order to constitute an ethics violation. The Tallahassee Ethics Code simply prohibits the act of soliciting or accepting a gift. The state statute goes a step further and requires a finding that there exists an understanding that an official action would be influenced by said gift. *See* § 112.313(2), FLA. STAT. (2021).

In sum, the monetary discounts in this matter would not be violations of gift ban under the state’s ethics code; however, since the Tallahassee Ethics Code does not require a finding of intent or motivation, the local ordinance could bar such discounts if said discount met the statutory definition of “gift.”

The Florida Commission on Ethics has reviewed numerous cases where government employees received discounts or complimentary goods, and in nearly all cases, the Commission found no violation under the state ethics code.

In Broward County, the Port Director, Deputy Port Director, and Port Commissioners with the Port Everglades Authority sought to purchase discounted tickets with a cruise line that paid tariffs to use the facilities at the Port. The cruise line offered discounts to all persons associated with the travel industry, including employees of the Port Authority. In this case, the Commission found that these individuals would not receive any preferential treatment or special rate beyond that publicly available to others in the travel industry. The individuals would in fact receive something of value; however, as a result of this broad application, the Commission found that there was no understanding or knowledge that the discounted rate meant to influence a decision. *See* CEO 89-31.

A similar situation arose in Collier County where on-duty county paramedics and EMTs received discounts from local restaurants and fast-food establishments. The restaurants did not offer discounts to all county employees. The Commission on Ethics found that the discounts did not violate the gift statute, because there was no understanding that the gift was intended to influence an official act. *See* CEO 88-42.

The Commission has previously addressed the issue of discounted cellular telephone services for state employees. Officials and employees with the Department of Revenue were offered discounts for cellular telephone service from a company that hired a lobbyist to appear on its behalf before the Executive Branch. The lobbyist sent flyers to some of the offices at the Department, offering a 15% discount off its regular prices for phone services. The flyer stated that the offer was for government employees. The Commission found that Executive Branch agency officials and employees could accept the discount. While confirming that the discount was clearly a thing of value, the Commission found no facts to imply the discount was made to influence an agency decision. *See* CEO 06-18.

Finally, 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 the offer was extended to all teachers and that there was no expectation of a favorable action by the teachers. The Commission added that a violation would like occur if the facts presented showed that the teachers received discounts with the expectation of better grades for the students performing the services. Again, the Commission's holding hinged on the motivation of the person giving the gift. *See* CEO 92-26.

It is important to note that this line of cases also reviewed other areas of the state's ethics code, specifically the prohibition of doing business with one's agency and restrictions on conflicting employment or contractual relationships. The Tallahassee Ethics Code does not contain language addressing those actions, so these issues we omitted from the above analysis.

The fact patterns presented above are similar to those currently before this Board. The discounted rates for rent at apartment complexes operated by Arbor Properties Development, Inc. are offered to all city employees. While there appears to be no intent by the donor to influence any actions by the donee, the local ordinance is stricter than the state statute and does not require this element to be satisfied.

Section 2-15 prohibits the solicitation or acceptance of gifts by covered individuals from a group of potential donors. No other conditions are present in the local ordinance that would create a next step in the analysis. The prohibited act is limited to whether a "covered individual" received a gift, as defined by state law, from a vendor, lessee of city property, lobbyist or any principal of a lobbyist, or a potential vendor or lessee. Once this question is answered in the affirmative, the assessment is complete. The intent or motivations of the donor are immaterial under the local ordinance.

Based on the facts presented, the undersigned cannot determine whether the inquirer is a "covered individual," subject to the ban on the acceptance or solicitation of gifts. Additional facts, however, make this finding unnecessary.

City public records indicate that Arbor Properties Development, Inc. does not currently have a lobbyist registered before the City of Tallahassee, but it has in the past. If the inquirer is a

covered individual, the code is not violated because the donor of the gift, Arbor Properties Development, Inc., is not a vendor or lessee of the City and does not have a lobbyist appearing before the City of Tallahassee. In the case that it was to retain a lobbyist, the question would be settled by a determination on whether the discounted rate is a gift.

Accordingly, under the circumstances described above, the act of a city employee, whether he or she is a “covered individual,” accepting a discounted rate on rent at an apartment complex from a company that at times has retained a lobbyist, would not violate the ban on solicitation or acceptance of gifts under the Tallahassee Ethics Code because said discount is available to all similarly situated city employees.

ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on August 16, 2022, and **RENDERED** this 16th day of August 2022.

APPROVED:



Carlos Rey (Aug 16, 2022 16:45 EDT)

Carlos A. Rey, Chair
Tallahassee Independent Ethics Board

ATTEST:

Dwight Floyd

DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:



Law Office of John Reid PLLC (Aug 16, 2022 16:47 EDT)

JOHN LAURANCE REID
Board Counsel