## CITY OF TALLAHASSEE INDEPENDENT ETHICS BOARD

AO 2022-06 – November 15, 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 A LOCAL CHARITY

To: Ms. Angel Charlton
Retirement Programs Administrator
City of Tallahassee
300 South Adams Street, Box A-30
Tallahassee, FL 32301

#### SUMMARY:

The inquirer is the Retirement Programs Administrator with the City of Tallahassee. As the chair of a city committee, the inquirer volunteers with the United Way of Big Bend in Tallahassee. As a volunteer committee, the members intend to solicit donations from individuals and businesses for the benefit of a charity. Additionally, the committee wishes to work at a concession stand at FSU football games with a percent of proceeds from drinks and food sold going toward the United Way of Big Bend.

#### QUESTION 1:

Does a City of Tallahassee employee serving in her or his capacity as a member of a city committee violate the municipal ethics code's ban on the solicitation and acceptance of gifts by seeking and receiving goods on behalf of a local charity?

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

The inquirer seeks advice on whether she and members of the city committee are prohibited by the current Tallahassee Ethics Code from soliciting and accepting goods and/or services from local businesses to be used for the United Way of Big Bend. The members may or may not take possession of said goods; however, they would do so on behalf of the charity. At the time this request for an advisory opinion was made, the members had not yet sought good or services, so it was not known the nature of the businesses solicited.

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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).

Based on the information provided by the inquirer, the undersigned cannot determine whether the committee members are procurement employees without further investigation;

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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. (2022).

Based on the facts provided by the inquirer, the committee members will accept something of value simply as a conduit of a charity, by whom they are not employed, and that the recipient of the gift is in fact the local charity. Simply managing tangible property does not make the city employee the recipient of the gift. The ordinance also prohibits the solicitation of gifts, but again, the gift must be for a covered individual, not the charity, to run afoul of the Ethics Code.

The inquirer implies that payments made at concession stands for tangible goods, of which the proceeds will be donated to the charity, may or may not pass through personal bank accounts or mobile payment services, such as Cash App or Venmo, held by the committee members working at the concession stands. Again, since the committee members would simply hold the funds as a conduit on behalf of the charity and not for their own personal use, such an act would not be considered the acceptance of a gift under the municipal ethics code. That being said, the intermingling of funds intended for a charity with a committee members personal funds may create an impression of impropriety to some; however, this is not a consideration that falls within the purview of the Tallahassee Independent Ethics Board. Such issues of policy are best to be addressed by the office of the City Attorney or the City Commission directly.

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. 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 on behalf of the United Way of Big Bend.

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**ORDERED** by the City of Tallahassee Independent Ethics Board meeting in public session on November 15, 2022, and **RENDERED** this 15<sup>th</sup> day of November 2022.

Carlos A. Rey, Chair Tallahassee Independent Ethics Board

Independent Ethics Officer

Board Counsel