

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2024-06 – April 16, 2024

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

*To: Mr. Aaron Bresnick
Energy Services
City of Tallahassee
2602 Jackson Bluff Road
Tallahassee, FL 32301*

SUMMARY:

Under the City of Tallahassee Ethics Code, a covered individual may accept free admission to a training or conference sponsored by a city vendor when free admission is made available by the city vendor to similarly situated individuals. A covered individual, however, may not accept free lodging paid for by that city vendor to attend its event. Employees who are not “covered individuals” are not subject to any restrictions from whom they may accept gifts or any items of value.

QUESTION #1:

Does a covered individual violate the Tallahassee Ethics Code ban on solicitation or acceptance of a gift by accepting free admission to an event sponsored by a city vendor when free admission is made available by that city vendor to similarly situated individuals?

The question is answered in the negative.

Eaton Corporation, a for-profit corporation, is hosting a training/conference on Grid Modernization on April 23 and 24, 2024 in Warrendale, Pennsylvania. The separate company, Electric Sales Associates, is also involved with the event. A representative from Electric Sales Associates, who was contacted for this analysis, stated that both companies are vendors with the City of Tallahassee; however, a review of the City’s database appears to indicate that only Eaton Corporation is a registered vendor. As a result, the inquiry proceeds under the assumption that Eaton Corporation is a city vendor while Electric Sales Associates is not.

The cost of the training/conference and the lodging will be paid for by one or both of these companies. The free admission and lodging will be made available to all members of the Florida Municipal Power Agency (FMPA). According to its website, the FMPA is “a wholesale power agency owned by municipal electric utilities in Florida. FMPA’s mission is to provide low-cost, reliable and clean power, plus value-added services for FMPA’s owner-customers that benefit their

communities and customers.”¹ Also, according to its website, the FMPA serves 33 municipal electric utilities throughout Florida.

It is unclear as to whether or not all or some of the city employees invited to attend the training are “covered individuals” as defined by local ordinance.

A “covered individual” is a legal term 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).

The Tallahassee Ethics Code only prohibits gifts to “covered individuals.” This definition includes elected officials, any city official or staff who files a financial disclosure, and procurement employees. If an employee who seeks to attend the training is not a “covered individual,” the inquiry is complete, and the employee can attend with the aforementioned companies paying the costs. If the employee is a “covered individual,” the inquiry continues.

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* (2024).

¹ <https://fmpa.com/about/>

The inquirer believes that he is a “covered individual” as defined by the Tallahassee Ethics Code. The following analysis proceeds on his behalf and under the assumption that the inquirer’s legal conclusion is correct.

The gift prohibition only applies when the donor of the gift is, *inter alia*, a city vendor. Since Electric Sales Associates does not appear in the City’s database of city vendors, this analysis proceeds based on the assumption that only Eaton Corporation is a city vendor. As a result, Eaton Corporation is a prohibited donor of a gift to a covered individual.

The next question is whether the items of value constitute gifts. The local ordinance refers to the state ethics code’s definition of gift. Admission fees for the training and lodging both fall within this definition. *See* § 112.312(12)(a), FLA. STAT. (2023).

Another provision of the gift definition includes a “preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate[.]” § 112.312(12)(a)5., FLA. STAT. (2023). This same provision also includes an exception, stating that a preferential rate is not a gift if it 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.” *Id.*

As it applies to the cost of admission in this case, the preferential rate provision and its exceptions apply. In this case, the rate for admission is set by the donor of the gift. The donor is not purchasing something of value, such as tickets to attend the event, from a third party for the benefit of a covered individual.

The state ethics code includes a statutory definition of “gift” that also addresses admission fees. This subparagraph explicitly lists “entrance fees, admission fees, or tickets to events, performances, or facilities.” § 112.312(12)(a)10., FLA. STAT. (2023). As the statute does not specify whether the term “admission fee” is when the cost of admission is simply waived by an event host or when paid for by another, the word just be viewed in its proper context.

When reading legal text under the traditional canon of construction, “words grouped in a list [will] be given a related meaning[.]” *Dole v. United Steelworkers*, 494 U.S. 26, 27 (1990). *See also* ANTONIN SCALIA & BRYAN A. GARNER, Reading Law: The Interpretation of Legal Texts 418 (2012) (“Because common words typically have more than one meaning, you must use the context in which a given word appears to determine its aptest, most likely sense.”).

When reading the term “admission fees” in context with the rest of this subparagraph, this provision appears to only apply when the donor pays the cost of admission as charged by a third party. In this case, the donor is not paying for the admission but instead is providing the training and setting the price to attend at a rate of zero. For this reason, the admission to this particular training/conference is a preferential rate subject to its exception.

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

The facts here closely resemble those from a case involving the Port Everglades Authority in Broward County. The Port Director, Deputy Port Director, and Port Commissioners 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 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).

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, *inter alia*, the offer was extended to all teachers. *See* CEO 92-26 (June 5, 1992).

Accordingly, based on the facts presented by the inquirer and this Board's reliance on those facts, the Tallahassee Independent Ethics Board finds that a covered individual attending a free event sponsored by city vendors that is open to similarly situated individuals would not constitute a violation of the City of Tallahassee Ethics Code.

QUESTION #2:

Does a covered individual violate the Tallahassee Ethics Code ban on solicitation or acceptance of a gift by accepting free lodging paid for by the city vendor to attend an event?

The question is answered in the affirmative.

The following analysis applies the same general facts as stated above. While the prior analysis states that free admission offered to similarly situated individuals meets an exception within the statutory definition of "gift," the cost of lodging is treated differently.

The provision in state law defining lodging as a gift reads, “Transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking.” § 112.312(12)(a)7., FLA. STAT. (2023). Unlike the provision addressing preferential rates, this subparagraph does not include any exceptions.

In the facts presented here, the donor would directly pay a third party, such as a hotel or motel, for the lodging; these expenses would not be paid for by the City of Tallahassee, which would be a governmental agency permitted to do so. Lodging paid for by the Eaton Corporation in this case would be nearly identical to a similar case from northeast Florida.

In that case, the Mayor of Jacksonville attended trips, which were intended to promote and benefit the city. The transportation and lodging for the mayor were paid for by private donors and then later attributed to the City of Jacksonville. The Commission on Ethics found this to be a violation of the gift statute, because the payments were made directly to a vendor from whom the mayor accepted goods or services. The violation would have been avoided if the donors had made the payments directly to the city and then the city paid for the travel and lodging on behalf of the mayor. *See* CEO 13-3 (Mar. 13, 2013).

The conflict here could easily be remedied if the City of Tallahassee paid for the lodging for those employees it wishes to have attend the training/conference and the Eaton Corporation later reimbursing the City for those costs. Numerous cases from the Florida Commission on Ethics have addressed identical fact patterns, and the Commission has opined that payment by the governmental agency which is reimbursed by the donor is a permissible action.²

Accordingly, based on the facts presented by the inquirer and this Board’s reliance on those facts, the Tallahassee Independent Ethics Board finds that a covered individual accepting free lodging paid for by a city vendor to attend an event sponsored by that same city vendor would constitute a violation of the City of Tallahassee Ethics Code.

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² *See* CEO 91-21 (supervisor of elections did not receive a gift when county paid for his travel to visit a voting machine manufacturer and the manufacturer subsequently reimbursed the county); *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 the sponsor reimbursed PSC for expenses); *see also* CEO 08-26 (state employee did not receive a gift when traveling 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).

ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on April 16, 2024, and **RENDERED** this 16th day of April 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

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Final Audit Report

2024-04-23

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Status:	Signed
Transaction ID:	CBJCHBCAABAAuOb305rc069C9cjhKyUfJ1Ymtl9GHDi4

"signed_AO 2024-06" History

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2024-04-22 - 1:57:50 PM GMT
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2024-04-22 - 2:44:08 PM GMT- IP address: 217.180.196.89
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Signature Date: 2024-04-23 - 6:13:07 PM GMT - Time Source: server- IP address: 217.180.196.89
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