

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2023-02 – September 19, 2023

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

*To: Mr. Bruce Davis
Employee Services Administrator
City of Tallahassee/Leon County
Consolidated Dispatch Agency
911 Easterwood Drive
Tallahassee, FL 32311*

SUMMARY:

Pursuant to the City of Tallahassee Ethics Code, all gifts, regardless of value, solicited or accepted by a covered individual from a lobbyist, vendor, or lessee are prohibited. The term “gift” is defined by state statute, and the term “covered individual” is defined within the Tallahassee Ethics Code. While the City’s gift prohibition only applies to “covered individuals,” city employees are subject to and may be restricted from soliciting and accepting certain gifts under state laws and city policies.

QUESTION #1:

Does an employee with the Consolidated Dispatch Intergovernmental Agency (hereinafter referred to as “CDA”), who is not an employee of the City of Tallahassee, violate the municipal Code of Ethics if he or she consumes food and beverages provided by vendors of the CDA?

The inquirer does not specify whether the affected employee would be a city employee, and if so, whether he or she would be a “covered individual,” as defined by local ordinance. As such, this advisory opinion addresses three (3) separate questions to account for those different scenarios.

Under the circumstances presented when the CDA employee is not a city employee, this question is answered in the negative.

The inquirer seeks advice on whether employees of the CDA may consume food and beverages while attending an office party when those items are purchased or provided by a vendor of the CDA. The office party will celebrate the agency’s 10th anniversary, and vendors who do business with the agency wish to partake in the festivities by contributing food and beverages.

The CDA is an independent agency created by interlocal agreement, pursuant to section 163.01, *Florida Statutes*, between the City of Tallahassee, Leon County, and the Leon County Sheriff. *See Leon County Off. Rec. Bk. 5237, pp. 397-407 (09/11/2018).*

The agreement empowers the CDA to hire its own employees. *Id.*, at § 2 ¶ 3. The agreement creates a governing board, which is comprised of members from the three (3) parties to the agreement. *Id.*, at § 3. A CDA Management Committee makes recommendations to the Board and carries out their directives. The Committee is comprised of the Sheriff’s appointee, the Police Chief, the Fire Chief, and the Emergency Medical Services Chief, or their respective designees. *Id.*, at § 4. The Board hires a CDA Director, who manages the agency. *Id.*, at § 5.

While the agreement provides for the CDA to hire its own employees, it also permits the agency to utilize employees from any of the three (3) parties to the agreement. The agreement reads, “The Board is authorized to utilize employees, property, equipment and services of the Parties in assisting the CDA in performing its obligations and duties as set forth in Agreement, upon the consent of the Parties, and the subject Party may charge the CDA reasonable costs associated therewith.” *Id.*, at § 9, ¶ B.

According to the inquirer, only two (2) individuals employed with the CDA do so as employees of the City of Tallahassee. The remaining employees either work directly for the CDA or another party to the interlocal agreement.

The Tallahassee Charter limits the jurisdiction of the City of Tallahassee Independent Ethics Board. The Board’s authority is over “officers and employees of the City of Tallahassee, whether elected or appointed, paid or unpaid, and over the members, officers and employees of any boards, commissions, or committees thereof.” TALLAHASSEE, FLA. CHARTER, § 61.a.

Accordingly, under the circumstances described above as they apply to individuals working with the CDA who are not employees of the City of Tallahassee, this Board finds that the act of those employees consuming food and beverages provided by a vendor of the agency would not constitute a violation of the Tallahassee Ethics Code.

QUESTION #2:

Does an employee with the CDA, who is an employee of the City of Tallahassee but is not a “covered individual,” violate the municipal Code of Ethics if he or she consumes food and beverages provided by vendors of the CDA?

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

The Tallahassee Ethics Code prohibits covered individuals from soliciting or accepting gifts from city vendors. 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* (2023).

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* (2023).

The inquirer identified that two (2) city employees worked with the CDA, but he did not provide further details, such as their job descriptions. Further information would be required to determine whether the two (2) city employees at the CDA are covered individuals.

Accordingly, under the circumstances described above as they apply to city employees working with the CDA who are not covered individuals, this Board finds that the act of those employees consuming food and beverages provided by a vendor of the agency would not constitute a violation of the Tallahassee Ethics Code.¹

¹ This finding, however, does not address whether such acts would violate any policies of the City of Tallahassee.

QUESTION #3:

Does an employee with the CDA who is an employee of the City of Tallahassee and a “covered individual” violate the municipal Code of Ethics if he or she consumes food and beverages provided by vendors of the CDA?

Under the circumstances presented, this question is answered in the affirmative only if the vendor providing the food and beverages is also a vendor with the City of Tallahassee.

If the CDA employee is a city employee and covered individual, but the vendor only works with the CDA and not the City of Tallahassee, this answer is answered in the negative.

If following further inquiry, one or both city employees working with the CDA are found to be “covered individuals,” as defined by local ordinance, that employee or those employees would be subject to the prohibition of accepting or soliciting a gift from a lobbyist, city vendor, and lessee of city property.

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, including: ...

8. Food or beverage.

§ 112.312(12)(a), FLA. STAT. (2023).

As food and beverages are explicitly identified as “gifts” under state law, the next level of inquiry must take place, which is to determine whether the gift is from a prohibited individual or entity.

The ordinance prohibits covered individuals from accepting or soliciting gifts from “**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* (2023) (*emphasis added*).

Again, the facts presented do not identify whether the donors are vendors of the City of Tallahassee in addition to vendors with the CDA. Once this question is answered, the proper determination can be made.

Accordingly, under the circumstances described above as they apply to city employees working with the CDA who are covered individuals, this Board finds the act of those employees consuming food and beverages provided by a vendor of the agency who does also contract with the City of Tallahassee would not constitute a violation of the Tallahassee Ethics Code.

To the contrary, if the city employee is a covered individual and the food and beverage is provided by a vendor who contracts with the City of Tallahassee as well as the CDA, this Board finds that the act of those employees consuming food and beverages from city vendors would constitute a violation of the Tallahassee Ethics Code.

NOTE: While differing from the facts presented in this inquiry, numerous cases before the Florida Commission on Ethics have opined that gifts provided directly to governmental entities for the benefit of a public official or employee would not constitute a gift to that public official or employee. Specifically, when a covered individual receives something of value, such as registration, travel, lodging, or meals, from his or her governmental agency and then the agency receives reimbursement from a third party, the covered individual has not violated the Tallahassee Ethics Code's prohibition against gifts.²

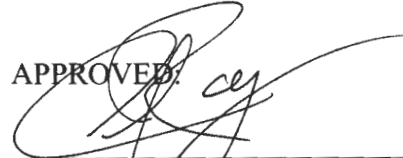
In this case, since the items are being provided for the enjoyment of the entire office, the CDA could avoid any potential violations by having the vendors provide the food and beverage directly to the agency and then having the agency sponsor the event. Under this scenario, the food and beverages would be provided by the agency and not the vendors.

(Intentionally left blank.)

² See CEO 91-21 (supervisor of elections did not receive a gift when the county paid for his travel to visit a voting machine manufacturer and the manufacturer subsequently reimbursed the county for expenses); 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 where the sponsor later reimbursed the PSC for his expenses); see also CEO 07-3 (state employees did not receive a gift when a state agency received discounted conference registration rates and then designated which employees would attend); see also CEO 08-26 (state employee did not receive a gift when he or she traveled 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 September 19, 2023, and **RENDERED** this 19th day of September 2023.

APPROVED:



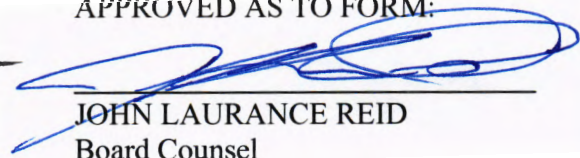
Carlos A. Rey, Chair
Tallahassee Independent Ethics Board

ATTEST:



DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:



JOHN LAURANCE REID
Board Counsel