

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2022-01 – January 18, 2022

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

**FREE CONFERENCE PASSES FROM CITY VENDOR TO COVERED
INDIVIDUAL/PROCUREMENT EMPLOYEE**

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 “procurement employee” constitutes a “covered individual” and is thereby covered by the gift ban ordinance. The acceptance of a gift requires the individual to receive something of value.

QUESTION:

Does a city employee who sat on a procurement scoring committee for the city violate the Tallahassee Ethics Code ban on solicitation and acceptance of a gift by accepting a free conference pass for her/himself and up to three (3) more users from a private company, Anaplan, that provides software used to prepare the City's budget?

Under the circumstances presented, this question is answered in the affirmative as it applies to the inquirer. As the free conference passes apply to the additional three (3) users would depend on additional information.

The inquirer seeks advice on whether she or he is prohibited by the current Tallahassee Ethics Code from accepting a free conference pass from a software company that serves as a city vendor. The conference is hosted by Anaplan for the purpose of training its current customers. The inquirer indicated that the procurement of the software had long been decided and is not currently pending for renewal.

According to the employee, she or he has participated in a procurement process involving goods or services valued at an excess of \$10,000 during the preceding 12 months. The employee clarifies that she or he sat once on a scoring committee for an RFP regarding the purchase of a vehicle by the City's Fleet Department. The employee identifies her/himself as a Management Analyst with the City's Resource Management Department. It does not appear that the employee has any involvement in the procurement of the software she or he uses during the course of her or his employment.

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 (2022)*.

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)*.

The inquirer is not a public official, so she or he was posed with the other (2) criteria found in the definition of “covered individual.” The inquirer answered in the negative for item number 2, but in the affirmative for the third criteria.

For the third criteria, the employee stated, “Yes? [sic] I was on the scoring committee for the Fleet Department’s RFP 096-21-KM Municipal Vehicles[,] Cars, Vans, SUV’s and Light Trucks this fall.”

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:

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. (2021).

The definition also includes exceptions, of which one is remotely applicable. The statute states that a gift does not include “[s]alary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee’s employment, business, or service ***as an officer or director of a corporation or organization.***” § 112.312(12)(b)1., FLA. STAT. (2021). (*emphasis added*)

The above exception would apply if the inquirer was “an officer or director of a corporation or organization.” The inquirer clearly identifies her/himself as an analyst as opposed to a department head, so she or he is clearly not a “director.”

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.¹ This is not the case as presented here.

Accordingly, under the circumstances described above, this Board finds that the act of a city procurement employee accepting a free conference pass from a city vendor violates the ban on solicitation or acceptance of gifts under the Tallahassee Ethics Code.

The inquirer also indicated that she or he was offered an additional three (3) conference passes for additional users. If the passes were offered to those users independently and those users did not fall within the definition of “covered individuals,” then the three (3) users could accept the gifts directly. If the three (3) users simply received the conference passes through the inquirer as a conduit, the gifts would have still been given to the inquirer, violating the applicable ordinance.

ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on January 18, 2022, and **RENDERED** this 31st day of January, 2022.

APPROVED:



[Carlos Rey \(Jan 31, 2022 18:03 EST\)](#)

Carlos A. Rey, Chair
Tallahassee Independent Ethics Board

ATTEST:



DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:



[Law Office of John Reid PLLC \(Jan 31, 2022 21:40 EST\)](#)

JOHN LAURANCE REID
Board Counsel

¹ 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).