FILE 2740 – July 26, 2019

GIFT PROHIBITIONS; MISUSE OF PUBLIC POSITION;
CONFLICT OF INTEREST

CITY POLICE CHIEF AFFILIATED WITH NONPROFIT ACCEPTING
DONATIONS FROM POLICE DEPARTMENT LOBBYISTS/VENDORS
AND ENGAGING IN FUNDRAISING ACTIVITIES

To: Wade C. Vose, Esq., Attorney for City of Cocoa Beach

SUMMARY:

Under the circumstances presented, donations received by a nonprofit organization where a police chief serves as an uncompensated director and engages in fundraising activities will not constitute "gifts" to the police chief under Section 112.3148, Florida Statutes, even if the donations are made by vendors, lobbyists, or principals of lobbyists of the police department. Nor will the Code of Ethics prohibit the police chief from wearing his uniform or identifying his public position when engaged in fundraising on the nonprofit's behalf, so long as he obtains permission from the proper authorities and remains in compliance with local ordinances governing such conduct. And since the police chief does not intend to have employment or a contractual relationship with the nonprofit, his affiliation with the nonprofit will not trigger the prohibitions found in Section 112.313(7)(a), Florida Statutes. Referenced are CEO 19-1, CEO 18-13, CEO 17-15, CEO 16-1, CEO 15-6, CEO 15-1, CEO 14-12, CEO 10-2, CEO 08-20, CEO 07-24, and CEO 91-52.

QUESTION 1:

Does a municipal police chief receive a prohibited gift under Section 112.3148(4), Florida Statutes, if a nonprofit corporation for which he serves as an uncompensated
director accepts donations from police department lobbyists, principals of lobbyists,
or vendors?¹

Under the circumstances presented, Question 1 is answered in the negative.

In your letter of inquiry and additional information provided to our staff, you indicate you are inquiring on behalf of a city police chief who is organizing—along with other city police officers and, potentially, members of the public—a charitable nonprofit organization. You indicate the purpose of the nonprofit is to solicit donations and then make charitable contributions to needy or deserving local families, individuals, and community organizations. You also indicate the nonprofit intends to use some of the donations to purchase equipment and gear which it intends to donate to the city's police department.

You relate the police chief intends to serve on the nonprofit's board of directors, although you emphasize neither the chief—nor any city personnel—will be compensated for their service to or work on behalf of the nonprofit.² You also indicate it is anticipated that the nonprofit's constitution and bylaws, which have yet to be written, will not provide for persons to have membership in the nonprofit.

Your inquiry stems partially from the nonprofit's intent to engage in fundraising.³ You relate that the nonprofit may consider soliciting and accepting donations from police department

¹ While your inquiry contains four numbered questions, this opinion, while addressing each question, reorganizes them and does not respond to them in the order presented in the inquiry.
² You state that, at most, the nonprofit might reimburse the police chief and affiliated city employees for any out-of-pocket expenses incurred in the course of serving as a director or engaging in fundraising.
³ In particular, you state the nonprofit anticipates: (1) applying for charitable grants from large corporations; (2) requesting donations from local businesses; (3) holding fundraising events, such
lobbyists, principals of lobbyists, or vendors, and that the police chief—acting on behalf of the nonprofit—may himself engage in such fundraising, either in person, by telephone, or in writing. You inquire whether the Code of Ethics prohibits the police chief from engaging in the fundraising.

The police chief is subject to the restrictions and disclosure requirements of Section 112.3148, Florida Statutes (the "gifts" law), as he is a "reporting individual" required to file financial disclosure. See CEO 16-1. Section 112.3148(4), Florida Statutes, the provision of the "gifts" law most pertinent to this situation, states:

A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or, directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of $100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

In short, Section 112.3148(4) prohibits the police chief, or anyone acting on his behalf, from accepting "directly or indirectly" any gift worth more than $100 from a lobbyist of his public agency (the police department), a principal of such a lobbyist, or a vendor.

as charity dinners and silent auctions; and (4) selling merchandise to the public.

4 Importantly, you relate the nonprofit does not intend to solicit or accept donations from political committees.

5 The term "lobbyist" is defined in Section 112.3148(2)(b)1., Florida Statutes, to mean any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental
The situation you present does not involve a direct gift to the police chief because the donations will be made to the nonprofit, not to him personally. The question remains, though, whether the donations can be viewed as indirect gifts to him, given his close affiliation with the nonprofit. The term "indirect gift" is defined in Commission on Ethics Rule 34-13.310(8)(a), Florida Administrative Code, as follows:

Where a gift is provided to a person other than the reporting individual or procurement employee by a ... vendor, by a lobbyist who lobbies the agency of the reporting individual or procurement employee, or by the partner, firm, employer, or principal of a lobbyist, where the gift or the benefit of the gift ultimately is received by the reporting individual or procurement employee, and where the gift is provided with the intent to benefit the reporting individual or procurement employee, such gift will be considered an indirect gift to the reporting individual or procurement employee.

The Rule proceeds to list various factors the Commission can consider when determining if an indirect gift has been made, although the Rule indicates the list is not exclusive.\(^7\)

\(^6\) The term "vendor" is defined in Section 112.3148(2)(f), Florida Statutes, to mean "a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods or services."

\(^7\) The considerations are listed in Rule 34-13.310(8)(c), Florida Administrative Code, which states:

Factors which the Commission will consider in determining whether an indirect gift has been made include but are not limited to:

1. The existence or nonexistence of communications by the donor indicating the donor's intent to make or convey the gift to the reporting individual or procurement employee rather than to the
Here, from what you indicate, the police chief clearly intends to be closely involved with the nonprofit. You indicate he is assisting in organizing the nonprofit, along with other city police officers and members of the public, and he plans to serve on its board of directors. The nonprofit's intent to donate equipment and gear to the city's police department further demonstrates a close affiliation with the police chief. However, as we have found in similar circumstances, the key consideration here is that the police chief does not intend to accept any compensation for his services to the nonprofit. Absent compensation, the police chief will not personally benefit from any donations made to the nonprofit and, therefore, the donations will not be indirect gifts to him.

We encountered a nearly identical situation in CEO 19-1, in which a school board member founded a nonprofit corporation for which she served as an uncompensated officer. The nonprofit engaged in extensive fundraising and the board member inquired whether donations could be

---

2. The existence or nonexistence of any relationship between the donor and the third person, independent of the relationship between the donor and the reporting individual or procurement employee, that would motivate a gift to the third person;
3. The existence or nonexistence of any relationship between the third person and the reporting individual or procurement employee that would motivate the gift;
4. Whether the same or similar gifts have been or are being provided to other persons having the same relationship to the donor as the third person;
5. Whether, under the circumstances, the third person had full and independent decision-making authority to determine whether the reporting individual or procurement employee, or another, would receive the gift;
6. Whether the third person was acting with the knowledge or consent of, or under the direction of, the donor;
7. Whether there were or were intended any payments or bookkeeping transactions between the third person and the donor, reimbursing the third person for the gift; and
8. The degree of ownership or control the donor has over the third
accepted from school district vendors. We advised that because the board member was not being compensated for her work on behalf of the nonprofit, any donations that the nonprofit received were not indirect gifts to her as they were benefitting the nonprofit alone. No corresponding benefit flowed to her. See also CEO 91-52 (finding the donations solicited by a city commissioner on behalf of a nonprofit seeking to establish a bird sanctuary and nature center could not be considered gifts to her as they were benefitting only the nonprofit). Similarly, here, because the police chief will not experience any benefit from the donations made to the nonprofit, they cannot constitute indirect gifts to him.  

However, the police chief should be aware that even though the donations to the nonprofit will not be considered "indirect gifts," two other provisions in the Code of Ethics could be triggered, in certain circumstances, by contributions that he solicits or receives on the nonprofit's behalf. Section 112.313(2), Florida Statutes, prohibits him from soliciting or accepting any donation based on an understanding that the contribution will influence some vote, official action, or judgment that he must make in his capacity as a police chief. In addition, Section 112.313(4), Florida Statutes, prohibits him from accepting any donation when he knows, or with the exercise of reasonable care should know, that it is being given to influence some action he might take as the police chief. The chief and other city personnel should carefully screen the circumstances of particular solicitations and donations, in light of these statutes.  

---

8 Philanthropic or altruistic satisfaction to the chief from successes of the nonprofit do not fit the applicable definition of "gift." For purposes of Section 112.3148, Section 112.312(12)(a)14., Florida Statutes, emphasizes that a "gift" is a "thing" having an attributable value.  
10 An additional statutory provision—Section 112.3148(3), Florida Statutes—prohibits the police chief from soliciting a gift of any amount from a vendor, lobbyist, or principal of a lobbyist of his
Question 1 is answered accordingly.

QUESTION 2:

Would the police chief misuse his public position in violation of Section 112.313(6), Florida Statutes, were he to wear his police uniform or identify his title with the police department while fundraising for the nonprofit?

Question 2 is answered in the negative, under the circumstances presented.

You also inquire on behalf of the police chief whether he will be in violation of Section 112.313(6) if he wears his police uniform or identifies himself by title, either verbally or in writing, while fundraising for the nonprofit. You indicate the police chief will obtain the permission of the city manager prior to wearing his uniform or using his title during fundraising.

Section 112.313(6), Florida Statutes, provides:

MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

The statute will prohibit the police chief from "corruptly" using or attempting to use his official position—or any property or resources placed within his public trust—in order to specially benefit himself or another. The wearing of his uniform or the mention of his title during fundraising would qualify as use of his public position and/or property or resources placed within his public trust. The agency, or from a political committee. However, because Section 112.3148(3) is limited to solicitations for the personal benefit of the police chief, another "reporting individual or procurement employee," or a member of his immediate family, it is not applicable here, where
question then becomes whether such use would be "corrupt."

For purposes of the prohibition, the term "corruptly" is defined in Section 112.312(9), Florida Statutes, as follows:

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In CEO 07-24, the Commission found it would not be "corrupt" under Section 112.313(6) for sheriff's office employees to wear their uniforms and associated equipment while privately campaigning for public office, so long as such use was with the permission of the sheriff and was in accord with the directive, policies, and orders of the sheriff's office. Similarly, in CEO 08-20, the Commission found that a State Senator would not be engaging in "corrupt" conduct under Section 112.313(6) were he to allow his private equity firm to identify his public position in memoranda and publications. We noted that while the self-identification of the Senator's public title might be, in a strict sense, a "use of position," it did not suggest the type of wrongful intent, or the type of action inconsistent with the proper performance of public duties, necessary to constitute "corrupt" conduct.

Here, you indicate the police chief will obtain permission from the city manager prior to using his uniform or mentioning his title during fundraising. Assuming the city manager is in a position to approve these uses of the police chief's public position and/or the property or resources placed within the chief's public trust, and assuming this conduct does not violate the city's, or the police department's, policies or regulations, then we do not find that the use of title

the solicitation will be for the benefit of the nonprofit.
or wearing of the uniform would rise to the level of "corrupt" conduct needed to trigger Section 112.313(6).

Question 2 is answered accordingly.

**QUESTION 3:**

Would the police chief have a prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, if the nonprofit donates equipment and gear to the city's police department?

Question 3 is answered in the negative, under the circumstances presented.

You further inquire whether the police chief's intended service as an uncompensated director of the nonprofit will create a prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, which concerns conflicting employment or contractual relationships. The statute states:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The statute is only triggered, however, if a public officer or employee holds employment or a contractual relationship in addition to his public office or public employment. See CEO 15-6. For this reason, the threshold question is whether the police chief will have either employment or a contractual relationship with the nonprofit.
From what you indicate, the police chief does not intend to have either type of relationship. A necessary element of "employment" is compensation or some form of remuneration. See CEO 19-1 and CEO 18-13. You state that while the police chief intends to serve as a director for the nonprofit, he does not plan to accept compensation or any form of consideration for his services. You also state you do not anticipate the nonprofit's constitution or bylaws providing for mere membership in the nonprofit. In the past, the Commission has found an uncompensated director of a nonprofit corporation does not have a "contractual relationship" with the corporation unless he or she also is a member. See CEO 14-12 and CEO 10-2. Accordingly, assuming the facts you describe remain unchanged, Section 112.313(7)(a) will not apply as the police chief will not have employment or a contractual relationship with the nonprofit.¹¹

Question 3 is answered accordingly.

XXX/gps/dw

cc: Wade C. Vose, Esq.

¹¹ In addition, as long as the equipment and gear is donated (not sold) by the nonprofit to the police department, it will not constitute "doing business" under Section 112.313(7)(a). See CEO 17-15 and CEO 15-1. Similarly, Section 112.313(3), Florida Statutes, is not implicated due to the donation not being a sale.
Gray,
Please handle.
Diana,
Please list to Gray.
Thanks,
Chris

From: Rahming, Deanna <RAHMING.DEANNA@leg.state.fl.us>
Sent: Friday, May 10, 2019 8:01 AM
To: Anderson, Chris <ANDERSON.CHRI$$@leg.state.fl.us>
Subject: FW: Ethics Inquiry

Chris, please see below. The call and email came in yesterday.

From: Wade Vose <wvose@voselaw.com>
Sent: Thursday, May 9, 2019 4:31 PM
To: Rahming, Deanna <RAHMING.DEANNA@leg.state.fl.us>
Cc: Scott Rosenfeld <srotenfeld@cityofcocoabeach.com>; Becky Vose <hvos@voselaw.com>
Subject: Re: Ethics Inquiry

Dear Ms. Rahming:

Thank you for our telephone conversation this morning, as well as your offer to provide a written informal opinion letter concerning the matters we discussed. The official we discussed has asked me to request such an opinion letter, and he is copied on this email.

Cocoa Beach Police Chief Scott Rosenfeld has expressed an interest in organizing, together with other Cocoa Beach police officers and potentially members of the public, a charitable nonprofit organization qualified under Sec. 501(c)(3) of the Internal Revenue Code (the "501(c)(3)". Generally, the charitable purposes of the organization would be solicit donations and otherwise fundraise, which funds would then be used to make charitable contributions to local families, individuals or community organizations, and/or to purchase additional optional equipment, gear, and the like, for the Cocoa Beach Police Department, that would otherwise not be provided by the City. To be clear, as currently contemplated, the 501(c)(3) would not be formed by the City itself, but by the Police Chief, other Cocoa Beach police officers, and other members of the general public.

It is further contemplated that the Police Chief, and potentially other police officers, would serve on the board of directors of the 501(c)(3), and fundraise for the 501(c)(3), in person, by telephone, and in writing. Neither the Police Chief, nor any member of City staff, would be compensated for service on the board of directors or for fundraising, but may receive for reimbursement for expenses incurred in the course of such work.

Based on the foregoing, I pose the following questions:
Question 1: Would the preceding circumstances, if effectuated, give rise to a violation of Sec. 112.313(7), Fla. Stat., concerning conflicting employment or contractual relationships?

Question 2: Would the Police Chief, or any police officer, fundraising for the 501(c)(3) in person while in uniform constitute a violation of Sec. 112.313(6), Fla. Stat., concerning misuse of public position? (Please assume for the purposes of the question that the Police chief or police officer otherwise had the permission of the City Manager to wear his or her uniform while fundraising in person.)

Question 3: Would the Police Chief, or any police officer, using his or her title with the Cocoa Beach Police Department, either verbally or in writing, when fundraising for the 501(c)(3), constitute a violation of Sec. 112.313(6), Fla. Stat.? (Please assume for the purposes of the question that the Police chief or police officer otherwise had the permission of the City Manager to use his or her title when fundraising.)

Question 4: Would the preceding circumstances, if effectuated, give rise to a violation of any other portion of Ch. 112 that I have not otherwise inquired about?

I believe the preceding accurately summarizes the relevant facts, and I thank you again for your offer to provide a written informal opinion letter concerning these matters. If you have any further questions or wish to discuss this matter further, please do not hesitate to contact me by email, or on my cell at 321-299-2289.

Sincerely,

Wade Vose
Cocoa Beach City Attorney’s Office

---

Wade C. Vose, Esq.
Board Certified in City, County & Local Government Law
Vose Law Firm LLP
324 W. Morse Boulevard
Winter Park, Florida 32789
Phone: 407-645-3735 ext. 1020
Fax: 407-628-5670
email: wvose@voselaw.com
web: www.voselaw.com
Toll-Free: 866-789-VOSE
London Tel: +44 (0)20 3355 1473

COUNSEL TO EXTRAORDINARY GOVERNMENTS, BUSINESSES & LEADERS
THROUGHOUT FLORIDA SINCE 1973
LOCAL GOVERNMENT REPRESENTATION | COMMERCIAL REAL ESTATE TRANSACTIONS | REAL ESTATE DEVELOPMENT & LAND USE
BUSINESS & REAL ESTATE LITIGATION | LENDER REPRESENTATION | GOVERNMENT RELATIONS | CAMPAIGN & ELECTION LAW

Orlando Business Journal’s
READER’S CHOICE
Thank You Again Central Florida!
Voted "Best Law Firm 2009 & 2010" by the Readers of the Orlando Business Journal

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, copying, or use of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply e-mail or by telephone at (407) 645-3735, and then delete it from your computer. Thank you. Disclaimer
Thank you, Mr. Vose. We will treat the request then as a formal opinion. Here are the clarifying questions. If you are not aware yet of the answers to some of these questions—as I understand the nonprofit is still being organized—simply indicate the answers have not yet been addressed:

1. Do you anticipate the constitution and bylaws of the nonprofit to provide for membership? If so, do you anticipate the Chief becoming a member of the nonprofit?

2. Please describe the type of fundraising activities that the nonprofit plans to engage in.

3. Does the nonprofit anticipate soliciting donations from lobbyists or vendors of the police department? Does it anticipate soliciting donations from political committees?

4. If offered, would the nonprofit accept donations from lobbyists or vendors of the police department, or from political committees?

5. My understanding is that the nonprofit would donate any equipment or gear purchased for the Cocoa Beach Police Department. Is that correct?

Please let me know if you need clarification on any of these questions. Thank you.

Gray Schafer
Senior Attorney
Florida Commission on Ethics
(850)-488-7864

Gray — Please find the responses to each of your questions below.

1. Do you anticipate the constitution and bylaws of the nonprofit to provide for membership? If so, do you anticipate the Chief becoming a member of the nonprofit?

It is anticipated that the constitution and bylaws of the nonprofit will not provide for membership in the nonprofit, and as a result, neither the Chief nor any other police officer would be a member of the nonprofit.
2. Please describe the type of fundraising activities that the nonprofit plans to engage in.

Concerning fundraising activities, it is anticipated that the nonprofit would (1) apply for charitable grants from large corporations, such as Walmart, Publix, Winn Dixie, and the like; (2) request donations from local businesses; (3) hold fundraising events, such as charity dinners and silent auctions; and (4) sell merchandise to the general public (not to the City or Police Department).

3. Does the nonprofit anticipate soliciting donations from lobbyists or vendors of the police department? Does it anticipate soliciting donations from political committees?

If the Commission found that it would be impermissible under Ch. 112 for the nonprofit to solicit donations from lobbyists or vendors of the police department, then of course it would not do so. If it were permissible, the nonprofit may consider soliciting donations from such persons or entities. The nonprofit does not intend to solicit donations from political committees.

4. If offered, would the nonprofit accept donations from lobbyists or vendors of the police department, or from political committees?

If the Commission found that it would be impermissible under Ch. 112 for the nonprofit to accept donations from lobbyists or vendors of the police department, the nonprofit would make its best efforts to not do so. In this respect, I would point out that traditional fundraising methods such as silent auctions make it difficult, as a practical matter, to preemptively exclude such donors. If it were permissible for the nonprofit to accept donations from lobbyists or vendors of the police department, it may consider doing so.

As to political committees, even if offered, the nonprofit would not accept donations from political committees.

5. My understanding is that the nonprofit would donate any equipment or gear purchased for the Cocoa Beach Police Department. Is that correct?

Correct -- Any equipment or gear purchased by the nonprofit and given to the police department would be donated by the nonprofit to the police department. At no time would the nonprofit be selling the equipment or gear, or any good or service, to the police department, and at no time would the police department be purchasing anything from the nonprofit.

If you have any other questions, please do not hesitate to contact me.

Sincerely,

Wade Vose
Thank you Mr. Vose.