

CEO 91-69 -- December 6, 1991

GIFT ACCEPTANCE/DISCLOSURE

COUNTY EMPLOYEES ACCEPTING CASH DOOR PRIZE AT SEMINAR SPONSORED BY CHAMBER OF COMMERCE AND OTHERS

To: Neal D. Bowen, Attorney for Osceola County (Kissimmee)

SUMMARY:

County employees who were "reporting individuals" and whose "agency" was the county commission were prohibited by Section 112.3148, Florida Statutes, from accepting a \$500 cash prize at seminars sponsored by organizations which employed persons to lobby the county commission. The cash constituted intangible personal property valued in excess of \$100 and no exemptions or exceptions allowed the gift. Sections 112.313(2) and 112.313(4) were not violated by acceptance of the prize, under the circumstances presented. CEO's 91-45, 91-39, 89-61, 86-19, 84-15, and 82-70 are referenced.

QUESTION:

Did the gift law prohibit county employees attending a seminar sponsored by a local chamber of commerce and others from accepting a cash door prize at the seminar?

Your question is answered in the negative as to some employees and in the affirmative as to others.

In your letter of inquiry and subsequent communication with our staff, you advise that some employees of Osceola County attended management and leadership seminars sponsored by the Kissimmee/Osceola County Chamber of Commerce; DML Training and Consulting, Inc.; Tupperware Home Parties; Valencia Community College; and Kissimmee-St. Cloud Convention Visitors Bureau. The employees' registration fees were paid by the Board of County Commissioners. You further relate that some of the employees are "reporting individuals" and that some may be "procurement employees." Seminar participants, by their attendance, were eligible to win a \$500 cash door prize.

The seminar sponsors all employed "lobbyists" who sought to influence the decisionmaking of the County Commission. The County had not established a registration or other designation process for lobbyists. The majority of the employees who attended the seminars were receptionists, secretaries, clerks, and clerical support employees ("front line" employees, you relate, who dealt with the public). The cash for the door prizes came from the treasury of the Chamber of Commerce. You further relate that you do not know whether any employees actually accepted door prizes or not.

The Code of Ethics for Public Officers and Employees provides in relevant part:

A reporting individual or procurement employee or any other person on his behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from 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 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. [Section 112.3148(4), Florida Statutes.]

A political committee or a committee of continuous existence, as defined in s. 106.011; a lobbyist who lobbies a reporting individual's or procurement employee's agency; the partner, firm, employer, or principal of a lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from giving, either directly or indirectly, a gift that has a value in excess of \$100 to the reporting individual or procurement employee or any other person on his behalf; however, such person may give a gift having a value in excess of \$100 to a reporting individual or procurement employee if the gift is intended to be transferred to a governmental entity or a charitable organization. [Section 112.3148(5)(a), Florida Statutes.]

'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 his benefit or by any other means, for which equal or greater consideration is not given, including:

3. Tangible or intangible personal property. [Section 112.312(12)(a), Florida Statutes.]

'Gift' does not include:

1. Salary, benefits, services, fees, commissions, or expenses associated primarily with the donee's employment or business.

2. Contributions or expenditures reported pursuant to chapter 106, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.

3. An honorarium or an expense related to an honorarium event paid to a person or his spouse.

4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.

5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.

6. Food or beverage consumed at a single sitting or event.

7. The use of a public facility or public property, made available by a governmental agency, for a public purpose. [Section 112.312(12)(b), Florida Statutes.]

...'intangible personal property' means property as defined in s. 192.001(11)(b). [Section 112.312(12)(c), Florida Statutes.]

As used in this section:

(b) 'Lobbyist' means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his agency. With respect to an agency that has established, by rule, ordinance, or law, a registration or other designation process for persons seeking to influence decisionmaking or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, the term "lobbyist" includes only a person who is required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law or who was during the preceding 12 months required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law.

(c) 'Person' includes individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(d) 'Reporting individual' means any individual who is required by law, pursuant to s. 8, Art. II of the State Constitution or s. 112.3145, to file full or limited public disclosure of his financial interests.

(e) 'Procurement employee' means any employee of an officer, department, board, commission, or council of the

executive branch or judicial branch of state government who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in s. 287.012, if the cost of such services or commodities exceeds \$1,000 in any year. [Section 112.3148(2), Florida Statutes.]

'Agency' means any state, regional, county, local or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university. [Section 112.312(2), Florida Statutes.]

Initially, before a gift will be prohibited under Sections 112.3148(4) and (5), the donee must be found to be within a class of persons addressed by the prohibitions. Due to the express terms of the statute, we find that the definition of "procurement employee" does not encompass any of the County employees attending the seminars, because that definition only applies to employees at the "state" level, not at the local level. However, we continue with further advice in the event that any employees of the County who were "reporting individuals" also were winners of a \$500 cash prize.

We find that the gift law prohibited the giving and acceptance of a \$500 cash prize to any County employee who was a "reporting individual" and whose agency was the County Commission, at the time of the gift (see CEO 89-61, CEO 84-15, and CEO 82-70), because the donors were employers or principals of lobbyists who lobbied the County Commission at the time of the gift or within twelve months preceding the gift, and because the prize (money) was intangible personal property with a value in excess of \$100. Acceptance of prizes by "reporting individuals" who were employees of County agencies other than the County Commission was not prohibited.

Further, it is our view that the full (\$500) value of the gift was attributable to each and every sponsor of the seminar, including the Chamber of Commerce from whose treasury the funds for the gift were derived. The organizations, other than the Chamber, cannot hold themselves out in the seminar brochures and otherwise as sponsors of seminars which include a \$500 cash prize and then be said not to be a donor of the gift (prize).

We also find that none of the exceptions from or exemptions to the gift law would apply. First, we find that the "reporting individuals" employed by the County Commission would not have given equal or greater consideration in exchange for the gift. The employees' time and work at a seminar, whatever their values, cannot be said to have constituted such consideration because attendance at the seminar was part of their public duties and not a provision of their private time or resources. See CEO 91-45, Question 1. Next, we do not see any facts in your scenario which indicate that the gift was one which was intended to be transferred to a governmental entity. In addition, it does not appear, under your facts, that the donors of the prize, including the Community College, were governmental entities of the type enumerated under Sections 112.3148(6)(a) and (b). Further, the prize was not exempt from the definition of "gift" as a benefit or gift associated primarily with the donees' employment or

business under Section 112.312(b)(1), because that exemption applies only to items associated with one's private, and not public, employment. See CEO 91-39.

In addition, Sections 112.313(2) and (4) provide respectively:

SOLICITATION OR ACCEPTANCE OF GIFTS.--No public officer, employee of an agency, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, or candidate would be influenced thereby.

UNAUTHORIZED COMPENSATION.--No public officer or employee of an agency or his spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer or employee knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer or employee was expected to participate in his official capacity.

These sections are applicable to all of the County employees in your scenario.

In CEO 86-19, we found that these provisions would not be violated were a city commissioner to accept an overseas trip from a local developer which was won in a drawing in which members of the general public could participate, at the opening of a subdivision of the developer in the city. Since it appears from the materials accompanying your opinion request that the seminars were open to participation by persons other than County employees, your situation is governed by the rationale of that opinion and, therefore, is a scenario which did not violate Sections 112.313(2) and (4).

Any "reporting individuals" who were not employees of the County Commission, who accepted a prize, should report it by the end of the calendar quarter following the quarter in which the prize was accepted, on CE Form 9.

Your question is answered accordingly.

CEO 13-2 -- March 13, 2013

GIFT ACCEPTANCE AND REPORTING

GIFT ACCEPTANCE AND DISCLOSURE REQUIREMENTS FOR SUCCESSFUL BIDDER AT SILENT AUCTION

To: Carla Miller, Jacksonville Office of Ethics, Compliance and Oversight

Matt Schellenberg, Jacksonville City Councilman

SUMMARY:

A member of a City Council, who places the highest bid on a "poker party" donated to a silent auction by a pari-mutual facility which is the principal of a lobbyist of the City, has not received a "gift" as the term is defined in Section 112.312(12), Florida Statutes. Rather, he has purchased an item at fair market value. Nor has the Councilmember received a gift when the pari-mutual facility, as part of its business operations, makes a contribution to a charity chosen by a member of the Councilmember's poker party group. CEO 93-27 is referenced.

QUESTION 1:

May a member of the City Council accept, and if so, must he report, a poker party for which he was the successful bidder at a silent auction, where the item was donated to the auction's organizers by the principal of a lobbyist of the City?

Under the circumstances presented, your question is answered as set forth below.

You inquire, on behalf of a member of the Jacksonville City Council, regarding the gift acceptance limitations and gift reporting requirements applicable to the Councilmember. Through e-mail correspondence and telephone conversations with our staff, you relate that the Councilmember attended a fundraiser for the Rotary Club in March 2012. You advise that the event was open to the public and was not targeted to public officers or employees. You write that as part of its event, the Club held a silent auction, that Rotary Club members solicited the items to be auctioned off, and that the Councilmember had no involvement in the solicitation. You also advise that the silent auction operated by having tables set up with the items (or a photo or description of the items) displayed. Attendees would write down their bids and sign their names on a sheet of paper provided, and at the end of the evening, the pieces of paper were collected and the highest bidder won the item. You state that all the bids could be viewed by subsequent bidders or other event attendees, but that neither the Club nor the donors of the items to be auctioned off had any ability to influence who would bid or win.

You write that the Councilmember placed the highest bid (\$250) on a poker party for 25 at a local poker room, and that the party, if sold by the poker room, would cost \$500. The gift was donated to the Rotary Club for the auction by the poker room, and a lobbyist for the poker room had, in September 2011, appeared before the City Council seeking a rezoning on behalf of the poker room. You inquire whether, under these circumstances, the poker party was a "gift," if so, whether the Councilmember may accept the gift, and if he may accept it, whether he must report it.

Section 112.3148(4), Florida Statutes, 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 political committee or committee of continuous existence, as defined in s. 106.011, or from 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.

Pursuant to this statute, the Councilmember is prohibited from accepting a gift worth more than \$100 coming directly or indirectly from a lobbyist of the City, or from a principal of that lobbyist.

The term "lobbyist" is defined at 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 decisionmaking of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency.

The poker room employed a lobbyist to act on its behalf in an effort to influence the Councilmember's agency - the City Council - in a rezoning issue less than 12 months before the silent auction. Accordingly, the poker room is the principal of a lobbyist, and the Councilmember would be prohibited from accepting, either directly or indirectly, a gift from the poker room worth more than \$100.

In CEO 93-27, we dealt with circumstances in which the Florida Sheriffs Association accepted items for use as door prizes in a drawing in which only sheriffs could participate. We said,

where a lobbyist agrees to donate a door prize to the FSA, it would appear that he has given a gift with an intent to benefit a sheriff, a reporting individual. That gift therefore would be considered an "indirect gift" for purposes of Section 112.3148(4), Florida Statutes, and Rule 34-13.310(6), Florida Administrative Code. Further, where a sheriff receives a door prize with a value in excess of \$100 provided by a lobbyist, he has received an indirect gift from a lobbyist which is prohibited by Section 112.3148(4), Florida Statutes.

In contrast to the situation addressed in CEO 93-27, under the circumstances you present there is no indication the poker room provided the poker party as an item to be auctioned by the Rotary Club with the intent that the Councilmember, or any public official, supply the winning bid. The event was open to all persons, and there is no suggestion that the poker room knew when it donated the item to the Club that the Councilmember would bid, much less win. Rather, the facts you have provided indicate that the poker room provided the poker party to the Rotary Club as an item to be auctioned as the Rotary Club saw fit and for its own benefit.

We further find that the poker party was not a "gift" from the Rotary Club to the Councilmember. The applicable definition of the term "gift" is found in Section 112.312(12)(a), Florida Statutes, which states that "gift" means "that which is accepted by a donee . . . [and] for which equal or greater consideration is not given within 90 days. . . ." The question here is whether the Councilmember paid "equal or greater consideration" to the Rotary Club for the poker party.

The Councilmember paid \$250 for a party for which the poker room would ordinarily charge \$500. However, he did so in the context of an auction, the very nature of which is to pit willing buyers against one another in an effort to obtain the highest price possible. Indeed, "auction" is defined as "a public sale in which property or items of merchandise are sold to the highest bidder." American Heritage Dictionary, Second College Edition, 1985. [emphasis supplied.] Although the poker room itself may be able to sell poker parties for \$500 in other circumstances, the fact that the Rotary Club was only able to obtain \$250 for the party it auctioned off does not convert the sale into a gift.

As we have found that the Councilmember has not received a "gift," it is not necessary to address the question of gift reporting requirements. Question 1 is answered accordingly.

QUESTION 2:

Would a donation by the poker room to a charity selected by a member of the Councilmember's poker party group constitute a prohibited gift to the Councilmember?

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

You relate that as a pari-mutual facility, the poker room is required to maintain a fund for charitable activities as part of its licensing. The poker room accomplishes its charitable activity requirement, at least in part, by making donations from this fund to charities chosen by winners at poker parties. You write that at the poker party, members of the Councilmember's group of 25 persons received chips to play with, and pursuant to the common business practice of the poker room, the winner of the night (the person finishing with the most chips) was allowed to designate a charity, to which the poker room made a \$1,000 donation. You advise that the Councilmember was not the winner of the night.

Section 112.3148(4) expressly contemplates, and does not prohibit, gifts to charitable organizations, even though such gifts may be handled by or associated with a public official. However, Section 112.313(2), Florida Statutes, states:

SOLICITATION OR ACCEPTANCE OF GIFTS.-No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

It is not inconceivable that a charitable contribution could be used or offered as a quid pro quo for official action. In Complaint No. 07-039, *In re Karen Marcus*, we found allegations that a county commissioner solicited a contribution to her favorite charity from a person interested in a matter before the county commission legally sufficient for investigation as to whether Section 112.313(2), Florida Statutes, had been violated. (The complaint was ultimately dismissed with a finding of no probable cause.)

In the facts before us, there is no indication that the Councilmember solicited the donation or that the donation was anything other than the fulfillment of the poker room's licensing obligations consistent with its usual business practices. Under these circumstances, we find that the donation was not prohibited by Section 112.313(2), and was not a prohibited or reportable gift pursuant to Sections 112.3148(4) or 112.3148(8).

Question 2 is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on March 8, 2013, and **RENDERED** this 13th day of March, 2013.

Susan Horovitz Maurer, *Chair*