

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2024-01 – February 20, 2024

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

**MISUSE OF PUBLIC POSITION
ORD. NO.: 2-8**

To: Name withheld at person's request.

SUMMARY:

Under the City of Tallahassee Ethics Code, a covered individual may participate in paid market research conducted by an international company whose final work product may be relied upon by a city vendor.

QUESTION #1:

Does a covered individual violate the Tallahassee Ethics Code ban on solicitation and acceptance of a gift by accepting payment from a company, which is not a city vendor, in exchange for participating in a consumer satisfaction interview provided by that company when a city vendor may use the findings?

This question is answered in the negative.

The inquirer is a city employee who agreed that she meets the legal description of a covered individual under the municipal ethics code. A “covered individual” is a legal term not found in the state ethics code but is defined by local ordinance.

Pursuant to the City of Tallahassee Ethics Code, all gifts, regardless of value, solicited or accepted by a covered individual from a city vendor are prohibited. The terms “gift” and “covered individual” are defined by state statute and local ordinance, respectively.

Based on the facts provided, the inquirer has gained access to a particular computer software program during the course of his or her employment with the City of Tallahassee. The inquirer has limited his or her use of this software to only those tasks required by employment.

The inquirer was contacted by an international firm that conducts market research and is currently seeking consumer input related to the aforementioned computer software. The international firm is offering compensation to all participants in their market research. The offer for compensation is not limited to the inquirer.

Also, based on the information provided by the inquirer, the firm's survey will be limited to general use of the computer software and will not delve into the specific work performed on behalf of the City of Tallahassee.

In order to determine a violation of the Tallahassee Ethics Code's prohibition on certain acceptance or solicitation of gifts, the analysis must consider and satisfy all elements of the prohibited act as provided in local ordinance. The individual must be a covered individual, the covered individual may not accept a gift or anything of value, and the donor of the gift must be either a city vendor, a lessee of city property, or a lobbyist or employer of a lobbyist appearing before the City.

For purposes of this analysis, 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).

The first element is whether the inquirer is a covered individual. While the inquirer did not specify the type of work he or she provides for the City of Tallahassee, he or she read the applicable ordinance and conceded that he or she was a covered individual. The term "covered individual" is 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 next step of the analysis is to determine whether the covered individual would receive a gift. The term “gift” is defined in the state ethics code as:

“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. (2023).

While the statutory definition of a gift does not explicitly mention them, cash and monetary payments are covered by the following language: “Any other similar service or thing having an attributable value not already provided for in this section.” *Id.* The acceptance of payment, therefore, would constitute as a gift under the state definition, and the inquirer concedes that he or she would accept the payment.

The final element of the prohibited act revolves around the donor of the gift. In order for a violation of the gift ban to occur, the gift must come from either a city vendor, lessee of city

property, or lobbyist. Based on the information provided, the international firm conducting the market research is clearly not a lessee of city property or a lobbyist. And while the international firm is not identified in public records as a city vendor in public records, the retailer of the computer software, who may rely on the findings made by the international firm, would be a city vendor. The question is whether this payment from a third party would be considered a gift from a city vendor to a covered individual. Based on these facts, it is not.

The international firm is providing market research from which a software company, who in some manner sold its product to the City of Tallahassee, will benefit. Based on the information provided, the information sought by the international firm will not be limited to work provided on behalf of the City of Tallahassee but will rather focus on general uses related to the software. These opinions would be relevant to the software company's licensing agreements with all customers, not just with Tallahassee.

A gift from a third party can constitute a prohibited gift by a city vendor to a covered individual if that third party is simply acting as a conduit of the transfer of the gift. For such an example, there must be a mutual understanding between the third party and the city vendor that the gift is simply a passthrough for the benefit of the covered individual. That is not the case here.

Accordingly, based on the facts presented by the inquirer and this Board's reliance on those facts, the Tallahassee Independent Ethics Board finds that the compensation made to a covered individual for his or her participation in a paid marketing research project is not a prohibited gift under the Tallahassee Ethics Code.

QUESTION #2:

Does a city employee violate the Tallahassee Ethics Code ban on the misuse of public position by accepting payment from a company, which is not a city vendor, in exchange for participating in a consumer satisfaction interview provided by that company when a city vendor may use the findings?

This question is answered in the negative.

The inquirer is a city employee who agreed that she meets the legal description of a covered individual under the municipal ethics code. A "covered individual" is a legal term not found in the state ethics code but is identified in local ordinance. As the misuse of public position ordinance applies to public officials and all city employees, the term is not relevant to this analysis.

Furthermore, the City of Tallahassee Ethics Code prohibits any covered individual or city employee from using his or her public position or resources within his or her control for the benefit of another individual or entity. The applicable ordinance reads as follows:

No public official or employee of the city shall use or attempt to use their official position or any city property or resource which may be within their trust, or perform or fail to perform, their official duties, in a manner inconsistent with the proper performance of the official's or employee's office and which the official or employee knows or should know with the exercise of reasonable care will result in a special privilege, benefit, or exemption for the employee, official, or others.

§ 2-8, *Tallahassee Code of Ordinances* (2024).

In this case, the city employee uses a particular computer software during the course of his or her employment with the City of Tallahassee. As a result of this use, the city employee has obtained a general knowledge of the software's strengths and weaknesses as well as an overall understanding of the product's value. These are personal opinions obtained by the city employee.

A secondary analysis can be made as to whether these opinions constitute intellectual property owned by the City of Tallahassee. Intellectual property is a property right that involves products of original human thought. Intellectual property generally falls into four (4) distinct categories: patents, copyright, trademarks, and trade secrets. Typically, employers are entitled to all intellectual property created by employees at their place of business or on behalf of the employer.

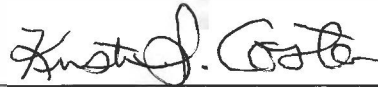
The personal opinions of the city employees do not appear to be intellectual property lawfully assigned to the City of Tallahassee. Personal opinions are simply that; they are opinions obtained through one's daily life which have implanted themselves in the psyche of the individual. The forming and storing of such information and opinions falls outside the employee's scope of employment; therefore, the opinions are solely his or hers.

As the personal opinions are not the intellectual property of the City, a city employee would not use "any city property or resource which may be within their trust" for his "special privilege, benefit, or exemption" by simply sharing his or her opinions with another, even if for financial compensation.

Accordingly, based on the facts presented by the inquirer and this Board's reliance on those facts, the Tallahassee Independent Ethics Board finds that the city employee would not violate the Tallahassee Ethics Code ban on misuse of public position if he or she received compensation for participating in a market research survey for computer software he or she uses through work.

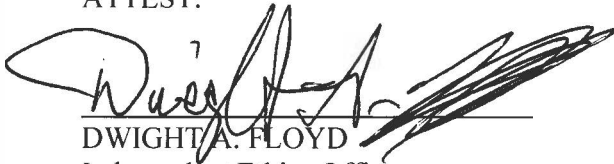
ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on February 20, 2024, and **RENDERED** this 20th day of February 2024.

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