

**CITY OF TALLAHASSEE  
INDEPENDENT ETHICS BOARD**

AO 2024-02 – February 20, 2024

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

*To: The Honorable John Dailey, Mayor  
City of Tallahassee, Florida  
300 South Adams Street  
Tallahassee, FL 32301*

**SUMMARY:**

Under the City of Tallahassee Ethics Code, a covered individual may help raise money toward a 501(c)(3) nonprofit even if that organization accepted and accepts donations from lobbyists who appear before the City of Tallahassee or from those who employ those lobbyists, and covered individuals in general may accept complimentary admission, if offered, to an event hosted by a 501(c)(3) nonprofit organization.

**QUESTION:**

Does a covered individual violate the Tallahassee Ethics Code ban on solicitation and acceptance of a gift by attending at no cost an event held by a 501(c)(3) nonprofit and helping to raise money toward that 501(c)(3) nonprofit at the event when the event has been financed by soliciting donations from lobbyists that appear before the City?

This question is answered in the negative.

The inquirer is an elected official, which is 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. The inquirer wishes to raise money for and on behalf of a 501(c)(3) nonprofit and also wishes to attend a private event hosted by that same organization in conjunction with the City of Tallahassee. The inquirer did not specify whether members of the City Commission would receive complimentary admission or whether they would pay for tickets. This advisory opinion, therefore, also addresses whether a covered individual may accept complimentary admission to such an event.

Pursuant to the City of Tallahassee Ethics Code, a covered individual is prohibited from accepting a gift from a lobbyist, vendor, or lessee of city property. The term “gift” is defined by state statute, and the term “covered individual” is defined within the Tallahassee Ethics Code. For the municipal ethics code, the gift or item of value accepted by the covered individual must be for his or her benefit and not merely accepted on behalf of a third-party not identified by ordinance. The term “covered individual” 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* (2024).

The event host is a foundation affiliated with the City's TEMPO program, which stands for Tallahassee Engaged in Meaningful Productivity for Opportunity. First established in 2017, TEMPO is a community engagement and public safety youth program housed within the Community Services Department at the City of Tallahassee. In 2020, the Community Services Department claimed that the growing demands of the program were no longer sustainable under its current budget; therefore, it recommended establishing the program as a nonprofit so outside funds could be solicited. That same year, the City Commission directed the department to convert TEMPO to a 501(c)(3) nonprofit, while remaining affiliated with the City of Tallahassee.

As a nonprofit foundation, TEMPO relies on funds from "federal, state, local governments, businesses, non-profit agencies, and individuals."<sup>1</sup> There is a high likelihood that some of the sponsors may be businesses that employ lobbyists who appear before the City of Tallahassee or individuals who are lobbyists themselves.

The inquirer is concerned about whether he may accept or solicit donations from prohibited donors when those funds are intended for the TEMPO foundation. Another issue not raised but worthy to consider is whether the donations made by lobbyists to TEMPO, from which a covered individual may at some point receive a benefit, constitute as a prohibited gift.

The Tallahassee Ethics Code prohibits covered individuals from soliciting or accepting gifts for themselves, other covered individuals, or relatives when those gifts are from city vendors, lessees of city property, or lobbyists who appear before city government.

The applicable ordinance reads as follows:

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<sup>1</sup> <https://www.talgov.com/neighborhoodservices/tempo>

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).

TEMPO does not qualify as any of the applicable classes who are prohibited from making or offering a gift to covered individuals. As TEMPO is a nonprofit affiliated within the City of Tallahassee, it would not lease property from the city, nor would it serve as a city vendor as any funds it receives from the city treasury would come via appropriations to the Community Services Department and not by direct payment. TEMPO also cannot be a lobbyist as it is merely a program within a department of the city itself.

The first issue, which requires little analysis, is whether an elected official may solicit donations from prohibited donors for the benefit of the TEMPO foundation. The gift prohibition is limited to subsection (a) of the solicitation or acceptance of gifts ordinance. Subsection (b) expands who would be a prohibited recipient and reads as follows:

For the purpose of this section, the prohibitions of subsection 2-15(a) do not apply if the gift is not for the personal benefit of the covered individual, another covered individual, or his or her relative, as defined in section 2-3

§ 2-15(a), *Tallahassee Code of Ordinances* (2024).

Based on the plain language of subsection (b), the inquirer may accept and even solicit donations from city vendors, lessees of city property, and lobbyists and those who employ lobbyists when those funds are made directly to a 501(c)(3) nonprofit foundation. This also assumes that no relatives of the inquirer serve with the organization.

The definition of relative is extremely broad and may include people who are not related by blood or marriage. Since no claim was made in the inquiry that a relative was involved with the organization, it will not be considered in this analysis. The definition of relative is found in section 2-4, *Tallahassee Code of Ordinances* (2024).

In sum, while TEMPO is affiliated with the city, the organization is a private foundation. As a result, its board members and staff would not be covered individuals as that definition does not extend beyond the walls of City Hall.

The second question for analysis, which was not part of the inquiry but is worthy of consideration, is whether TEMPO is prohibited from making a gift to a covered individual because it received moneys from lobbyists or employers of lobbyists.

The lobbyist classification in section 2-15 also includes those who hire lobbyists as either an employee or independent contractor. The undersigned was unable to locate any lists of private donors to TEMPO; therefore, this analysis is based on the reasonable assumption that at least one donor to the organization either lobbies directly or hires a lobbyist that appears before the City of Tallahassee.

As the inquirer is clearly a covered individual and we are operating under the assumption that a lobbyist has donated to TEMPO, the remaining factor to consider related to this particular ethics code violation is whether a gift is made to the covered individual from the lobbyist or one who employs a lobbyist.

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. (2023).

While not part of the inquiry, covered individuals could foreseeably receive something of value from the nonprofit organization by way of attending the event. The question remains whether anything of value would be coming from TEMPO or from the lobbyist as a passthrough gift. The local ordinance clearly states that the acceptance of the gift can be “directly or indirectly.” This means that a gift from a prohibited person or entity through a conduit to a covered individual could constitute a prohibited gift.

In order for a violation to occur in this case, the lobbyist and TEMPO would need to mutually understand that the moneys made to the organization were done so for the purpose of benefiting a covered individual. This case is different as all donations were made to the nonprofit for the organization’s benefit. The intended recipient at the time of the gift was not designated to be for any covered individual. This lack of coordination breaks the connection between the lobbyist and covered individual; therefore, any donations to TEMPO which may later result in something of value passing to a covered individual would not be a prohibited gift.

The Florida Commission on Ethics has reviewed numerous cases analogous to this one. While some found ethical violations, those cases with similar fact patterns to those present here typically found no violation.

A case related to the Florida Office of Financial Regulation is very similar to this inquiry. In that case, the employees for the Office of Financial Regulation were all offered discounted rates to a conference. The Commission found that while these employees all realized individual financial savings, the discounts did not constitute gifts to the employees as the discounts were offered to the state agency for the benefit of its staff. *See* CEO 07-03 (Jan. 31, 2007).

Similarly, when a voting equipment manufacturer reimbursed the Okaloosa County Office of the Supervisor of Elections so the Supervisor could take a trip to inspect voting equipment, the Commission found no violation since the funds were made directly to the agency and not the individual. *See* CEO 91-21 (Apr. 19, 1991).

Contrast this case to one involving the former Mayor of Jacksonville. In that case, the mayor attended trips to promote Jacksonville, which were intended to benefit the city. The transportation and lodging for the mayor were paid by private donors and then later attributed to the City of Jacksonville. The Commission on Ethics found this to be a violation of the gift statute, because the payments were made directly to or through the elected official or directly to a vendor from whom the mayor accepted goods or services. The violation would have been avoided if the

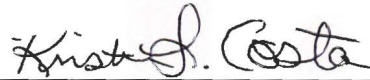
donors had made the payments directly to the city and then the city paid for the travel and lodging. *See* CEO 13-3 (Mar. 13, 2013).

This limited inquiry focuses on when a covered individual receives something of value from the nonprofit organization by way of attending the event in question. This could include complimentary admission, door prizes, etc. As in the first two cases above, the funds that would have provided for those items resulted from donations made to a third party and not a covered (reporting) individual. The third party then took control of the funds, and the third party made the gift or conveyed something of value directly to the covered individual. The general rule is that gifts or funds provided directly to governmental entities for the benefit of a public official or employee do not constitute a gift to that public official or employee.

In sum, the inquirer is permitted to raise money on behalf of the nonprofit and to accept anything of value from the nonprofit associated with attending the event even when the nonprofit has received or receives general donations from lobbyists or individuals employing lobbyists.

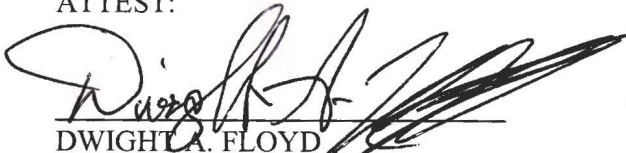
**ORDERED** by the City of Tallahassee Independent Ethics Board meeting in public session on February 20, 2024, and **RENDERED** this 20<sup>th</sup> day of February 2024.

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