

Memo

To: Thomas M. Kallman, City Commissioner, City of Weston

From: Jamie A. Cole, City Attorney, City of Weston

Date: January 19, 2017

Re: Ability of Elected Official to Accept Gift (Schachtman)
CAO : 17-W01 (Gift Reporting and Acceptance)

cc: City Commission
City Manager

On January 5 to January 11, 2017, you and your spouse stayed in a condominium in Sugar Mountain, North Carolina, owned by your personal friends (Steve and Andrea Schachtman) of more than twenty years. You paid \$70.00 for cleaning the unit, sent the Schachtmans a gift basket valued at \$75.00 and wrote them a check in the amount of \$400 to cover your lodging expenses. Mr. Schachtman works for Johnson Controls International, a company which, unknown to you, had submitted a proposal to the City and, on Tuesday, was awarded a contract by the City. You wish to know whether you have acted in accordance with state and local ethics laws by reimbursing your friends the reasonable costs associated with your stay in their condominium.

The Broward County Code of Ethics has incorporated the state statutory definition of the term “gift.” (See Section 1-19(c)(1)(b)). Pursuant to Florida Statutes Section 112.312(12)(b), an elected official has not received a “gift” if the official provides the donor with equal or greater consideration within ninety days of receiving the gift. In the instant case, you promptly paid the donor for the lodging costs in connection with your use of their condominium and we find that your payments represent the fair market value of the lodging costs. The basis for our conclusion is the results of Internet search we conducted for comparable accommodations in the vicinity of Sugar Mountain in January 2017. We found prices ranging from \$62 - \$135, and averaging around \$100 per night. Since you reimbursed the donor \$545, you gave the donor adequate consideration for use of their condominium. Consequently, you have not received a gift under state or local law because you reimbursed the donor within ninety days of accepting the gift. Since your stay at the Sugar Mountain condominium does not constitute a gift to you, you have no further state or local disclosure or reporting requirements.

Notwithstanding the fact that you received no gift from the Schactmans because you repaid the them, we also want to offer guidance as to whether the offer to you was a gift from a contractor. Broward Code Section 1-19(c)(1)(a) contains certain restrictions on the acceptance of gifts. A municipal official and his or her relatives are prohibited from accepting gifts valued at more than \$5.00 from registered lobbyists, vendors, contractors or suppliers. Section 1-19(c)(1)(b) states that elected officials may accept gifts from other sources given to them in their official capacity up to a maximum of \$50 per occurrence. The \$50 limitation is not applicable to gifts given to elected official in their "personal (non-official) capacity." Based on the fact the City awarded a contract to Johnson Controls International at the January 17, 2017 Commission meeting, Johnson Controls meets the definition of a contractor or vendor and you would be prohibited from accepting a gift from this entity greater than \$5.00. However, the question to examine is whether a gift from a contractor's employee constitutes a gift from the contractor and would be barred if it exceeds \$5.

Florida law defines a vendor as a business entity doing business directly with an agency. (See Fla. Stat. Section 112.3148(2)(f)). Although the law identifies the entity as the donor, the practical reality is that gifts cannot be exchanged without the participation of individuals. It is our view that a gift from one who has an ownership interest in the business entity or an employee acting on behalf of the business entity when offering the gift may be standing in the shoes of the contractor and such gifts might be limited to \$5 under the local ethics code. Similarly, if a gift is given out of the contractor's funds, no matter the status of the employee offering the gift, it would be reasonable to conclude the gift is from the contractor. Under this analysis, the gift from your personal friend is not a gift from Johnson Controls for the following reasons: Mr. Schactman has no ownership interest in the company; the company did not direct your friend to offer this gift to you and no company resources were spent on this gift. Accordingly, we find that the \$5 cap on a gift coming from Johnson Controls as a City contractor would not be applicable to the gift you received from the Schactmans.

In summary, you did not receive a gift from the Schactmans because you reimbursed them the fair market value of the gift. Furthermore, even if you had not, you were permitted to accept the gift from them and were under no repayment obligation due to the fact the source of the gift was personal friend, it was given to you in your non-official capacity, and your friend does not fall within the definition of a City contractor.

This Opinion is provided pursuant to Subsection 8 of the County Ethics Code, which allows an Elected Official to request an advisory opinion about how the Code applies to his or her own situation. "Requests for opinions shall state all material facts necessary for the advising attorney to understand the circumstances and render a complete and correct opinion, and such facts shall be recited in the issued opinion." In addition, "until amended or revoked, an advisory opinion rendered pursuant to this section shall be binding on the conduct of the Elected Official covered by the opinion unless material facts were omitted or misstated in the request for advisory opinion. If the Elected Official acts in accordance with a binding advisory opinion, the Elected Official's conduct may not be found to be in violation of the Broward County Elected Official

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Code of Ethics. However, any opinion rendered under this section shall not be binding as to whether the Elected Official's action complies with state or federal ethics requirements.”

Assuming that you have disclosed all pertinent facts to us, you may use this opinion as a “safe harbor” under the Broward County Ethics Ordinance should any questions arise concerning the Opinion provided herein.

If you need any additional guidance regarding this matter, please contact us.

Jamie A. Cole
City Attorney