



Memorandum No: 18-119

City Attorney's Office

To: Hon. Dean J. Trantalis, Mayor

From: Alain E. Boileau, Interim City Attorney
Paul G. Bangel, Senior Assistant City Attorney

Date: July 12, 2018

Re: Global Harbour Cities Forum

cc: Scott Wyman, Asst. to the Mayor

You have requested an ethics opinion on the Government of Taiwan's offer to sponsor you and your assistant at the Global Harbour Cities Forum in Kaohsiung, Taiwan, in September ("Forum"). You have indicated that the Government of Taiwan would pay for airfare, hotel, and conference charges, and that you and your assistant would be attending a variety of seminars that cover tourism, climate change, joint business opportunities, the yachting industry, and convention centers. You have also stated that you would be a speaker at one panel during the Forum.

Neither the Broward County Code of Ethics for Public Officials ("Broward Ethics Code) nor the Florida Code of Ethics for Public Officers and Employees (Florida Ethics Code) prohibits accepting expenses associated with attending the Forum provided the donor is not a lobbyist, provided there is no solicitation or influence, and provided there will be training that will directly benefit the public, and that it constitutes an honorarium event. Under the foregoing circumstances, no reporting is required. However, reporting may be required for any other expenses, such as extended accommodations and charges, or expenses related to your assistant, which could be deemed an indirect gift to you.

DISCUSSION:

Florida Law

At the outset, please note that general prohibitions, which apply to both you and your assistant, are upon accepting:

[A]ny 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 or her official capacity

§112.313(4), Fla. Stat. (2018). This includes soliciting or accepting “anything of value to the recipient . . . based upon any understanding that the vote, official action, or judgment of the public officer [or] employee . . . would be influenced thereby. §112.313(2), Fla. Stat. (2018).

That being said, §112.312(12)(a), Fla.Stat. (2018), defines “gift,” for purposes of ethics in government and financial disclosure required by law . . . ” to include “[t]ransportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking,” and “[f]ood or beverage.” §112.312(12)(a)(7), (8), Fla.Stat. (2018). **However, the definition of “gift” excludes “[a]n honorarium or an expense related to an honorarium event paid to a person or the person’s spouse.”** §112.312(12)(b)(3), Fla.Stat. (2018) (emphasis added). The Commission on Ethics has interpreted expenses related to an honorarium event as including “the payment or provision of **actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event.**” Commission on Ethics Opinion (“CEO”) 91-57, October 25, 1991 (emphasis added).

In reference to CEO 13-3, March 13, 2013, which you mentioned in connection with your assistant’s conversations with Betsy Dailey of the Florida Commission on Ethics, the Commission stated, “[s]ince the gift law was first enacted in 1990, we have never concluded that a public officer had not received a gift when he traveled at the expense of someone other than his agency.” As the Commission further explained:

To summarize and to clarify our view of the gift law in this area, when an individual is transported or provided lodging and it is paid for or provided by another, so long as that individual did not provide equal or greater consideration to the payor or provider for that transportation or lodging, the individual received a “gift” as that term is defined in Section 112.312(12), **unless the circumstances are specifically excluded by a paragraph within Section 112.312(12).**

CEO 13-3, citing In re Jonathan A. Manatay, Complaint No. 03-081, COE Final Order No. 06-315 (2006) (emphasis added).

Consequently, pursuant to §112.312(12)(b)(3), Fla. Stat., and CEO No. 91-57, inasmuch as you will be speaking as a panelist at the conference, your reasonable transportation, lodging, and food and beverage expenses related to the honorarium event are excluded from the definition of “gift,” and no reporting is required. However, to the extent there may be extended accommodations and charges, or expenses related to your assistant, which could be deemed an indirect gift to you, it is my recommendation

that the amount of such unrelated expenses be reported to the Commission on Ethics as gifts in accordance with §112.3148(8)(a), Fla.Stat. (2018).

Please note that the Florida Commission on Ethics is the final authority on issues under the Florida Ethics Code, and this opinion cannot be relied upon *vis à vis* the Florida Commission on Ethics.

Broward Ethics Code

Subsection 1-19(c)(1)(a), Broward County Code, provides:

No Elected Official or relative, registered domestic partner, or governmental office staff of any Elected Official, shall accept any gift, directly or indirectly, with a value in excess of \$5.00, from lobbyists registered with the governmental entity on whose behalf they (or their registered domestic partner or relative) serve, or from any principal or employer of any such registered lobbyist, or from vendors or contractors of such governmental entity. In order to effectuate this provision, no lobbyist shall engage in any lobbying activity prior to registering as a lobbyist with the applicable governmental entity. ***For purposes of this paragraph, neither Broward County, any municipality within Broward County, or any other governmental entity shall be considered a registered lobbyist, a principal or employer of a registered lobbyist, or a vendor or contractor of any governmental entity within Broward County.***

(emphasis added). By definition, the government of Taiwan is not a lobbyist, nor does the Government of Taiwan appear on the City Clerk's list of lobbyists.¹ Furthermore, §1-19(c)(1)(b), Broward County Code, provides:

Elected Officials may accept gifts from other sources given to them in their official capacity, where not otherwise inconsistent with the provisions of Chapter 112, Part III, Florida Statutes, up to a maximum value of \$50.00 per occurrence. Gifts given to an Elected Official in his or her official capacity up to \$50.00 in value are deemed to be *de minimis*. A governmental entity giving a gift to its own Elected Official shall not be considered a gift from an "other source" for purposes of the \$50.00 limitation.

Absent a definition of "gift" in the Broward Ethics Code, Section 1-19 provides that operative words are defined as follows:

¹ I would recommend verifying the City's Clerk's list of lobbyists to determine that the Taiwanese attaché referenced in your communication is not registered as a lobbyist.

All operative words or terms used in this Elected Official Code of Ethics but not defined herein shall be as defined, in order of priority in the event of inconsistency, by Part III of Chapter 112, Florida Statutes, the Broward County Code of Ordinances, and the Broward County Administrative Code.

As previously stated, while the definition of “gift” set forth in §112.312(12)(a), Fla.Stat., includes “[t]ransportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking,” and “[f]ood or beverage,” it excludes “[a]n honorarium or an expense related to an honorarium event paid to a person or the person’s spouse.” Additionally, §1-19(c)(1)(e) provides:

When not otherwise permitted by this part (c)(1), "Acceptance of Gifts," the following items may be accepted to the full extent permissible under state law:

...

2. Training, including the payment or reimbursement of expenses incurred in connection therewith, provided the training relates to the Elected Official's public service. The receipt of such training is deemed to directly benefit the public on whose behalf the Elected Official serves;
3. Nonalcoholic beverages²

Except for newly elected officials training and the annual training requirement, “training” is not defined in the Broward Ethics Code. “A statute or ordinance must be given its plain and obvious meaning.” Rinker Materials Corporation v. City of North Miami, 286 So.2d 552 (Fla. 1973). The Merriam-Webster Dictionary defines “training” as “the act, process, or method of one that trains,” and “train” as “to teach so as to make fit, qualified, or proficient.” Notably, the City’s website proclaims:

An advantageous economic climate is helping the City of Fort Lauderdale establish itself as a world-class international business center and one of the most desirable locations for new, expanding or relocating businesses. Once known strictly as a tourism-based economy, Fort Lauderdale now supports a diverse range of industries, including marine, manufacturing,

² Inclusion of nonalcoholic beverages among the items that may be accepted suggests that alcoholic beverages exceeding \$50 in value may not be accepted. *Expressio unius est exclusio alterius*. (The statement of one thing excludes others.)

finance, insurance, real estate, high technology, avionics/aerospace, film and television production.

It is therefore my opinion that "training" includes attending seminars on tourism, climate change, joint business opportunities, the yachting industry, and convention centers, and that such training relates to your public service as Mayor.

CONCLUSION:

The Florida Ethics Code does not prohibit acceptance of travel to and attendance at the Forum, as expenses related to an honorarium event. Similarly, the Broward Ethics Code does not prohibit acceptance of travel to and attendance at the Forum for training related to your public service as Mayor. Consequently, no reporting is required. However, reporting may be required for any other expenses, such as extended accommodation and charges, or expenses related to your assistant, which could be deemed an indirect gift to you.

Lastly, with regards to the foregoing advisory opinion from a municipal attorney, §1-19(c)(8)(c), Broward County Code, provides that:

The Elected Official shall ensure that, within fifteen (15) days after he or she receives an advisory opinion, the opinion is sent in searchable "pdf" format to ethicsadvisoryopinions@broward.org for inclusion in the searchable database of advisory opinions to be maintained by the County.

If you would like assistance in that regard or have any questions, please feel free to contact me.