

LEGAL DEPARTMENT

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November 30, 2018

The Honorable Denise Horland
City Council Member
City of Plantation
400 NW 73rd Avenue
Plantation, FL 33317

Re: Plantation Chamber Reception This Evening

Dear Council Member Horland:

You requested my advice last evening after attending an OIG Ethics Seminar concerning the gift implications of attending the Chamber's Reception this evening, where the Chamber has offered the elected officials a free ticket having a face value of \$50.00. I was not aware of this event and no other elected official brought this to my attention. Nevertheless, I have copied all elected officials with this correspondence.

Executive Summary

Under the Broward County Ethics Ordinance, elected officials may accept gifts given to them in their official capacity provided (i) the donor does not belong to a prohibited class and (ii) the gift does not exceed \$50.00 in value. As to the first issue (i), while the event is being hosted by the Chamber, some of the event sponsors (who are still being recruited by the Chamber) are or may be vendors of Plantation, contractors of Plantation, Lobbyists, or clients of Lobbyists, and so an analysis was necessary as to whether such sponsorships are "indirect gifts" from a prohibited class of donors, and I have concluded based on the facts as I understand such sponsorships are not indirect gifts. As to issue (ii), you may accept a free ticket to the event, but you should not accept a free ticket for your spouse or "relative", nor should your spouse or relative accept ticket from the Chamber if offered to them directly. Third, in this case, the value of food and beverages being supplied at the event is less than the cost of the ticket, and so the value of the "gift" is \$50.00.

Safe Harbor Opinions are only as good as the "facts" set forth in them upon which they are based. I have not independently verified any of the oral advice I have received concerning the operative "facts". You are a new elected official, and so at any time, you have the prerogative of not accepting any gifts when offered to you in your official capacity. Doing so puts to rest all issues concerning the propriety thereof, and eliminates any risk that the operative facts on which this opinion is based are or become inaccurate or contain an omission of consequence. If you do not wish to accept the ticket, you can certainly do so. To avoid gift implications, you can pay the \$50.00 ticket cost.

Discussion

The relevant facts as I understand them are that the Greater Plantation Chamber of Commerce, Inc. ("Chamber") is hosting a reception for the City's elected officials this evening. I am informed by the Chamber's Executive Director and President, Ms. Edwards, that this event is similar to ones held by the Chamber previously after other municipal elections. The Chamber has contracted with Guidant Management, LLC ("Guidant") at arms length for food and beverages (including an open bar) and the venue will be at the Plantation Preserve (the City's golf course which is operated by Guidant under a management contract). The Chamber's total expected costs for the event is \$3,556.00 for eighty (80) persons or \$35.00 per person. The Chamber expects that eighty (80) persons, will attend this event. If more than eighty (80) persons attend the event, it is not expected that the event cost will exceed the \$50.00 per attendee ticket price.

When doing events, Ms. Edwards advised that the Chamber solicits sponsorships from its Members in a blast e-mail. This year, sponsors include business entities who are Chamber Members and who have contracts with Plantation, such as Superior Towing and Waste Management. Sponsors are still being recruited, and it is possible that Lobbyist who belongs to the Chamber, and his or her clients, may also sponsor the event; however, all sponsors are or will be Chamber Members, I am informed. I am informed there were no communications received from sponsors indicating any intent to make a gift to an elected official as opposed to sponsoring an event for Chamber Members (and others) who purchase tickets. Second, all of the sponsors in the event flyer I was given are Chamber Members and so they have a relationship with the Chamber. Third, I am informed that none of the sponsorship communications made or received by the Chamber indicated that sponsorships would be solicited so that elected officials could attend the event *at no cost*. I am informed by Ms. Edwards that the Chamber has a Twelve Member Executive Committee of the 30 or so Board of Directors, with two Committee members being non-voting (the Executive Director/President and Legal Counsel), and one non-voting Honorary Member (who is the sitting Mayor of Plantation). Finally, I am informed by Ms. Edwards that none of the Members of the Executive Committee made or participated in the decision to offer elected officials free tickets; instead, this was exclusively Ms. Edward's decision, and further, the Executive Committee does not ever get involved in those decisions, I was informed.

Under the Broward County Code of Ethics, neither elected officials nor their relatives may accept direct or indirect gifts from "vendors," "contractors," or "lobbyists" or clients of Lobbyists having a value more than \$5.00. In examining whether an indirect gift is being made under the County's law, local government attorneys examine the Rules of the Florida Ethics Commission relating to indirect gifts which is found at §34-13.310 (8) Florida Administrative Code, and which states:

"(8) Indirect Gifts.

(a) Where a gift is provided to a person other than the reporting individual or procurement employee by a political committee or vendor, by a lobbyist who lobbies the agency of the reporting individual or procurement employee, or by the partner, firm, employer, or principal of a lobbyist, where the gift or the benefit of the gift ultimately is received by the reporting individual or procurement employee, and where the gift is provided with the intent to benefit the reporting individual or procurement employee, such gift will be considered an indirect gift to the reporting individual or procurement employee.

(b) Where a gift or the benefit of a gift is provided to a reporting individual or procurement employee by someone other than a political committee, a lobbyist, or the partner, firm, employer, or principal of a lobbyist, or a vendor, but the gift or the expense of the gift has been provided by or paid

for by a political committee, a vendor, or a lobbyist, or the partner, firm, employer, or principal of a lobbyist, who intends thereby to benefit the reporting individual or employee, such gift will be considered an indirect gift to the reporting individual or procurement employee.

(c) Factors which the Commission will consider in determining whether an indirect gift has been made include but are not limited to:

1. The existence or nonexistence of communications by the donor indicating the donor's intent to make or convey the gift to the reporting individual or procurement employee rather than to the intervening third person;

2. The existence or nonexistence of any relationship between the donor and the third person, independent of the relationship between the donor and the reporting individual or procurement employee, that would motivate a gift to the third person;

3. The existence or nonexistence of any relationship between the third person and the reporting individual or procurement employee that would motivate the gift.

4. Whether the same or similar gifts have been or are being provided to other persons having the same relationship to the donor as the third person;

5. Whether, under the circumstances, the third person had full and independent decision-making authority to determine whether the reporting individual or procurement employee, or another, would receive the gift;

6. Whether the third person was acting with the knowledge or consent of, or under the direction of, the donor;

7. Whether there were or were intended any payments or bookkeeping transactions between the third person and the donor, reimbursing the third person for the gift; and

8. The degree of ownership or control the donor has over the third person.

(d) The provisions of this subsection may be illustrated by the following examples:

Example 1: A law firm which lobbies the agency of Reporting Individual C ("C") invites all of its attorneys to attend a weekend retreat. The attorneys are encouraged to bring their spouses or significant others at the firm's expense. C is married to an attorney in the firm and has been asked by her spouse to attend the retreat. The lodging provided to C for the retreat would be considered a gift to C from her spouse and thus not prohibited, because the firm's invitation was extended to C's spouse by virtue of his employment with the firm.

Example 2: Reporting Individual D ("D") hosts a fox hunt attended by other reporting individuals. Lobbyists who lobby the agency of D give money to a third person, who is not a reporting individual, to pay for the food and beverages which will be served at the fox hunt. D orders and prepares the food and beverages. The money provided to the third person by the lobbyists would be a gift to D, because it was given with the intent of benefiting D and his guests at the fox hunt.

Example 3: A principal which employs 10 lobbyists who lobby the agency of Reporting Individual M ("M") channels a gift costing \$1,000 to M through its 10 lobbyists. Although each lobbyist's share of the gift is \$100, the gift would be prohibited because it is an indirect gift from the principal with a value of excess of \$100.

Example 4: Reporting Individual N ("N") and N's spouse have arranged to take a vacation trip together. A lobbyist who lobbies N's agency meets with the spouse and offers to pay for the spouse's travel expenses, which would exceed \$100. The lobbyist and N's spouse know each other only through the lobbyist's involvement with N. This would constitute an indirect gift to N, and would be prohibited because its value exceeds \$100."

In evaluating these factors, several factors influence my opinion that the sponsorships do not constitute indirect gifts. Ms. Edwards *exclusively* made decisions as to ticket cost, as to what would be served, and where, and as to whether a free ticket would be offered to an elected official. As stated above, I am informed there were no communications from or to sponsors indicating that a gift was being

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solicited or being received to or for any elected official as opposed to giving money to the Chamber for the event. Sponsors are not paying any money to the supplier of the food and beverages, instead, the Chamber is paying for the event costs. While there are a few “contractors,” vendors,” “lobbyists,” or clients of Lobbyists of the Executive Committee who are sponsors, the Executive Committee had no control over the decision whether to offer a free ticket to the elected officials. As it turns out, it is reasonable to expect that the ticket sales are likely going to be sufficient to pay for the costs of the event, and so the sponsorship revenue might be used for other Chamber functions. Finally, all sponsors are Chamber Members, I am informed, and have a relationship with the Chamber which is separate from their ethics relationships with elected officials as defined by law.

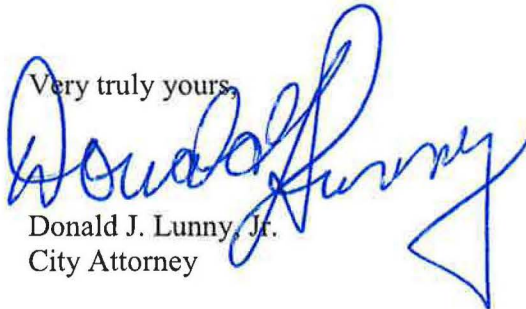
The Chamber has no contract with Plantation and is not a vendor of Plantation. It does receive a budgetary subsidy for public events it conducts (such as the Holiday Parade and the Annual Wine Festival). Moreover, while Guidant is a contractor of the City, my understanding of the event is that the food and beverages are being supplied under a contract with the Chamber and was procured by Ms. Edwards at arms length.

Conclusion

You may accept one (1) free ticket for your attendance at the Chamber event tonight and such tickets are not an indirect gift from prohibited donors based on the facts as I understand them. This Opinion is a Safe Harbor Opinion under the Broward County Ethics Ordinance.

On the other hand, if you do not wish to rely on an opinion which is based on “facts” as have been relayed to me, and you wish to put all issues to rest concerning the matter, you may pay the \$50.00 ticket cost.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Donald J. Lunny, Jr.", written over the typed name and title.

Donald J. Lunny, Jr.
City Attorney

DJL:tw

Cc: City of Plantation Elected Officials
Susan Slattery, City Clerk
Quentin Morgan, Assistant City Attorney

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