



## OFFICE OF THE TOWN ATTORNEY

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DLO 21-03

### TOWN COUNCIL

Judy Paul  
MAYOR

Councilmember Michelle Whitman  
Town of Davie  
6591 Orange Drive  
Davie, FL 33314

August 24, 2021

### COUNCILMEMBERS

Michelle Whitman  
Councilmember  
District 1

Dear Councilmember Whitman,

*RE: Attending the 2021 Florida CERT Association Conference paid by the City of Fort Lauderdale*

Caryl Hattan  
Vice Mayor  
District 2

Thank you for your request of a legal opinion on this important issue. In preparation for this opinion, I have reviewed Florida Statute Chapter 112, the Town of Davie Code of Ordinances, the Broward County Code of Ethics, Broward County Ethics Opinions, and Florida Commission on Ethics Opinions. You have requested a legal opinion on the following:

**May I attend the 2021 Florida CERT Association  
Conference paid for by the City of Fort  
Lauderdale as the team leader for the Town of  
Davie CERT Chapter**

Susan Starkey  
Councilmember  
District 3

Marlon Luis  
Councilmember  
District 4

In preparation for this opinion, I educated myself on Community Emergency Response Team (CERT), their mission, and role within the Town of Davie. CERT is a 501(c)3 national volunteer organization whose Florida Chapter is based out of Naples, Florida. The Florida CERT Association has chapters throughout the State and their mission is to educate volunteers about disaster preparedness for hazards that may impact their area and trains them in basic disaster response skills. During natural disasters CERT members activate and provide imperative services to the Town Emergency Operation Center, without compensation. You have informed me you are the Florida CERT Davie Chapter Team Leader. This is a volunteer position which holds no special privileges. Your role as Team leader is to aid in team coordination and document organization. Your involvement in CERT is unpaid and provides invaluable aid to the Town of Davie residents during a natural disaster.

**FACTS.** The City of Fort Lauderdale has received funding from the Urban Area Security Initiative Program, which is a grant from the Department of Homeland Security, to fund two members of each municipal CERT team within Broward County to attend the 2021 Florida CERT Association Conference. This offer is available to all Broward County CERT Chapters. The Davie CERT Chapter has roughly fifty members with about twenty five active members. You are the only member who volunteered to attend the conference on behalf of the Davie CERT Chapter. There is a \$175 conference registration fee which is paid directly to the Florida CERT Association by the City of Fort Lauderdale. There is also a \$129 a night, two total nights, hotel cost which is paid directly from the City of Fort Lauderdale to the hotel. You are financially responsible for travel to and from the conference. Food and non-alcoholic drinks are included in the registration fee. The rules for gifts are covered in Florida Statute § 112.3148, Broward County Ordinance § 1-19, and Town of Davie Ordinance § 2-330. I will address the Florida Statute first.

**Florida Law.** Pursuant to Florida Statute § 112.3148, you are a reporting individual governed by the Florida rules of ethics. State law prevents the solicitation or acceptance of gifts that may reasonably be perceived to have been given to encourage you to take any action in your elected official capacity. State law also prohibits the acceptance of gifts from lobbyists and vendors of the municipality.

The City of Fort Lauderdale is a Broward County municipality. This gift was offered to all the Davie CERT members. This gift is not given to you to encourage you to take any action in your elected official capacity. The City of Fort Lauderdale is not a Town of Davie registered lobbyist nor are there any items on upcoming Town Council agendas in which the City of Fort Lauderdale may lobby the Town. The Town of Davie does procure water from the City of Fort Lauderdale and has mutual emergency aid agreements. Florida Statute § 112.3148(2)(f) defines vendor as *a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services*. The term business entity is further defined in Florida Statute § 112.312(5) *any corporation, partnership, limited partnership, company, limited liability company...* nowhere in the definition does business entity include a municipality.<sup>1</sup>

The City of Fort Lauderdale is not a business entity. Since the City of Fort Lauderdale is not prohibited from giving you a gift you may accept their offer to cover the registration and hotel expense for the 2021 Florida CERT Association Conference. You must disclose this gift utilizing the appropriate Florida gift disclosure form.

**Broward County.** Pursuant to Broward County Ordinance Section 1-19 *Code of ethics for elected officials*, you are a Municipal Official. Broward County prevents the solicitation or acceptance of gifts that may reasonably be perceived to have been given to encourage you to take any action in your elected official capacity. Broward County

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<sup>1</sup> See also *Blacks Law Dictionary, Ninth Edition*, which has separate definitions for business and public entities.

also prohibits the acceptance of gifts from lobbyists and vendors of the municipality. Section 1-19(b)(13) defines vendor as:

*A person or entity that is currently supplying any goods or services to the applicable local governmental entity, that has supplied any goods or services to the applicable local governmental entity within the current or prior two (2) calendar years, or that has, by submitting a response to a currently open competitive solicitation, expressed an interest in supplying any goods or services to the applicable governmental entity. Commencing January 1, 2017, "Vendor" shall also include a person or entity that submitted a response to a competitive solicitation during the current or prior two (2) calendar years.*

Broward County Code of Ordinances Section 1-19(c)(1)(a) clarifies the term entity, above, as follows:

*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.***

The City of Fort Lauderdale is a Broward County municipality. This gift was offered to all the Davie CERT members. This gift is not given to you to encourage you to take any action in your elected official capacity. The City of Fort Lauderdale is not considered a lobbyist or vendor. Since the City of Fort Lauderdale is not prohibited from giving you a gift you may accept their offer to cover the registration and hotel expense for the 2021 Florida CERT Association Conference. You must disclose this gift utilizing the appropriate Florida gift disclosure form.

**Town of Davie.** Pursuant to Town of Davie Ordinance 2-330 *no elected official may accept any gift directly or indirectly with a value in excess of \$5.00, from lobbyists registered with the governmental entity... or vendor...* The City of Fort

Lauderdale is not a lobbyist with the Town of Davie. The Town has emergency MOUs for Fire, Life Safety, EMS, and Police emergencies. These MOUs are standard throughout Broward County for life safety reasons. There is no monetary value in these MOU's. The Town of Davie does purchase bulk water from the City of Fort Lauderdale. On August 4, 2021 the Town adopted a new procurement code. With this new change the town adopted definitions. Section 2-317 defines vendor as *an actual or potential supplier of an item, service, or construction*. This definition conflicts with Florida Statute § 112.3148(2)(f). Section 2-317 further states *any definition herein contained that conflicts with Florida Statutes, the Florida Statue definition shall control*. The legislative intent of this code was not to classify municipalities and other government agencies as vendors. This intent is codified in Section 2-330(b)(2)(a) *Neither Town of Davie, 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.*<sup>2</sup>

The City of Fort Lauderdale is not a vendor and you may accept their offer to cover the registration and hotel expense for the 2021 Florida CERT Association Conference. You must disclose this gift utilizing the appropriate Florida gift disclosure form.

I will provide a copy of this legal opinion to [ethicsadvisoryopinions@broward.org](mailto:ethicsadvisoryopinions@broward.org) for inclusion in the searchable database of advisory opinions to be maintained by Broward County, pursuant to Section 1-19(c)(8)(c) of the Broward County Code of Ordinances.

Respectfully submitted,



Allan T. Weinthal, Esq.  
Town Attorney

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<sup>2</sup> See also *Town of Davie Ordinance Section 2-323(e)* Purchases of goods or services from the federal government, any state or political subdivision thereof, or any municipality are exempt from the requirements of this section.