



Memorandum No: 23-008

City Attorney's Office

To: Commissioner John C. Herbst

From: D'Wayne M. Spence, Interim City Attorney

Date: February 2, 2023

RE: Invitation to the Executives' Association of Fort Lauderdale's 62nd Annual Economic Forecast Breakfast

On January 25, 2023, Walter B. Duke, III, MAI, CCIM President of Walter Duke + Partners, Inc. sent an email to you requesting that you be his guest at the Executives' Association of Fort Lauderdale's 62nd Annual Economic Forecast Breakfast to be held on February 14, 2023. According to its website, the Executives' Association of Fort Lauderdale ("EAFL") is a group of business executives whose purpose is "to connect the community with the most reputable companies and thought leaders across all business sectors" and "to give our members the chance to exchange valuable insights, resources, and opportunities." The EAFL's Annual Economic Forecast Breakfast is an annual meeting at which EAFL membership is informed of economic conditions. Breakfast is the format of EAFL's weekly meetings. The 62nd Annual Economic Forecast Breakfast includes lectures from keynote speakers David H. Koh, a Managing Director and Senior Investment Strategist for the Chief Investment Office and Walter B. Duke III. Mr. Duke indicated that the cost per seat is \$100.

You have requested an opinion as to whether you may accept an invitation from Walter B. Duke, III, MAI, CCIM President of Walter Duke + Partners, Inc. to be his guest at the EAFL's 62nd Annual Economic Forecast Breakfast. For the reasons stated below, it is my opinion that you may accept the invitation to the EAFL's 62nd Annual Economic Forecast Breakfast as a gift legally permissible to accept from a source other than a vendor or lobbyist pursuant to Florida Code of Ethics, and as training and expenses incurred in connection with the training in accordance with Section 1-19(C)(1)(e)2. of the Broward County Code of Ethics for Elected Officials. This gift's value is less than the value for which reporting is required in accordance with § 112.3148 Fla. Stat. (2022).

Our office analyzes gift questions under both the State of Florida and Broward County ethics codes, as both contain limitations on the acceptance of gifts. No gift may be

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solicited or accepted based on an understanding that it is given with the intent to influence the actions of an individual subject to Florida's ethics code. See § 112.3148(4), Fla. Stat. (2022). The state code of ethics also prohibits a reporting individual from accepting gifts that value in excess of \$100 from a vendor doing business with his or her governmental entity or from a registered lobbyist but provides no value cap on gifts that may be accepted from other sources. § 112.3148(4), Fla. Stat. (2022). I have checked our applicable databases and neither Walter B. Duke, III or Walter Duke + Partners, Inc. are a lobbyist, vendor or contractor of the City and therefore a gift from Walter B. Duke III is not subject to the \$100 value cap.

A gift, for purposes of ethics in government and financial disclosure required by law, is defined to include entrance fees, admission fees, or tickets to events, performances, or facilities as well as food and beverage. See § 112.312(12)(a) (2022). In accordance with § 112.3148(8), Fla. Stat. (2022), reporting individuals are required to file a statement disclosing gifts he or she believes to be valued in excess of \$100. Attendance of the EAFL's 62nd Annual Economic Forecast Breakfast is legally a gift, however, the costs of attendance does not exceed \$100, therefore, under the Florida Code of Ethics you may accept the gift and are not required to disclose acceptance of the gift.

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.

The Broward Ethics Code for Elected Official, Section 1-19 does not provide a definition for "gift", however, the section provides that operative words are defined as follows:

"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, the definition of "gift" set forth in § 112.312(12)(a), Fla. Stat. (2022), includes entrance fees, admission fees, or tickets to events, performances, or facilities as well as food and beverage," however, §1-19(c)(1)(e) provides:

"e. 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:

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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;"

Except for newly elected officials' training and the annual training requirement, "training" is not defined in the Broward Ethics Code for Elected Officials. "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."

It is my opinion that "training" includes attending forums, seminars, and other meetings at which attendees are informed on economic conditions, and that such training relates to your public service as a city commissioner.

The Florida Ethics Code does not prohibit acceptance of an invitation as the gift from a source other than a vendor or lobbyist and does not require reporting of the gift when the value does not exceed \$100. The Broward Ethics Code does not prohibit acceptance of an invitation and related expenses to attend trainings, such as the Economic Forecast Breakfast, related to your public service as a city commissioner.

This advisory opinion is issued pursuant to Section 1-19(c)(8) of the Code of Ethics, and may be relied upon by the individual who made the request. This analysis is limited solely to the facts presented. Within fifteen (15) days of receiving this opinion, a copy must be sent in a searchable "pdf" format to ethicsadvisoryopinions@broward.org for inclusion in the searchable database of advisory opinions maintained by the County.

If you have any questions or concerns, please let me know.