

Jacob G. Horowitz
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**GOREN CHEROF
DOODY & EZROL P.A.**
ATTORNEYS AT LAW

ETHICS ADVISORY OPINION

To: Commissioner Lisa Mallozzi

From: Jacob G. Horowitz, City Attorney *JGH*

Date: June 10, 2024

Re: City of Cooper City (“City”) / Code of Ethics – Advisory Opinion

You have provided the City Attorney’s Office with the facts set forth in Section I, below, and requested a “safe harbor” advisory opinion under the Broward County Code of Ethics for Elected Officials (“Code of Ethics” or “Code”).

I. FACTS PRESENTED

Under the terms of its contract with the City, the City’s former solid waste hauler, Waste Management (“WM”) funded an annual scholarship for high school seniors in the amount of \$5,000¹. The City’s Green Advisory Board (the “Board”) reviews applications from any and all interested high school seniors residing in the City on an annual basis and awards the scholarship money as it deems appropriate. The Board members are appointed by the City Commission.

This year the City received eleven (11) applications from high school seniors.² Your twin daughters are two (2) of the scholarship applicants. The City Commission plays no role in vetting, reviewing or evaluating the applicants, and the scholarships are funded solely with the funds provided by WM. There are no City funds included as part of the scholarship award.

¹ WM contributed \$5,000 during its final contract renewal term; however, in prior years the scholarship amount funded by WM was \$10,000.

² It was previously understood that the City had received seven (7) applicants for the scholarship award; however, eleven (11) applications were received.

{00609135.2 3451-0000004 }

Please reply to Fort Lauderdale Office

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After reviewing the applications from high school seniors, the Board included your twin daughters among the scholarship award recipients. Your daughters have accepted the scholarship, and you have now inquired as to whether you daughters may keep the award.

Additionally, on April 26, 2024, these facts were presented to the general counsel's office for the Florida Commission on Ethics ("FCE"). A copy of the inquiry to the FCE, along with the general counsel's response, is attached to this memorandum for additional context and analysis under Ch. 112, F.S.

II. ANALYSIS

The Code of Ethics expressly incorporates the definition of "gift" from Ch. 112, F.S. Sec. 112.313(12)(a), F.S., defines "gift," in relevant part, as follows:

"...that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days..."

The statute goes on to detail several examples of things that are both included and excluded from the definition of "gift."

On or about August 24, 2023, the City and WM entered into the Seventh Amendment to their agreement for solid waste collection services (the "WM Agreement"). Sec. 5 of the Seventh Amendment expressly provided, as follows:

A. Education

CONTRACTOR, in coordination with the City, will continue the Annual Scholarship program in the amount of \$5,000 per year during the Renewal Term, to be contributed by the CONTRACTOR *to the City* to help support selected graduating high school seniors with their future higher education aspirations. (emphasis added).

The City's contract with WM, last amended pursuant to the Seventh Amendment, expired on March 31, 2024; however, the definition of "vendor" under the Code of Ethics includes any entity that supplied services to the City within the prior two (2) years. Therefore, WM would still be considered a "vendor" for purposes of the Code.

The Broward County Code of Ethics, which is more restrictive than the requirements of state law, establishes the following three (3) categories of gifts:

- 1) Gifts from lobbyists, vendors and contractors;
- 2) Official capacity gifts; and
- 3) Personal (nonofficial) capacity gifts.

The restrictions on gifts from lobbyists, vendors and contractors also extends to your “relatives,” as that term is defined in Sec. 112.3135, F.S. For reference, your daughters are considered “relatives” for purposes of these gift restrictions. In accordance with the Code of Ethics, elected officials and their relatives may not accept gifts from City vendors with a value in excess of \$5.00, along with several other limited exceptions.

However, in order to “trigger” the gift provisions of the Code of Ethics, the scholarship in question must fall within the definition of a “gift,” as set forth above. It is our understanding that the scholarship award was not accepted by you or by your daughters on your behalf, nor was the award held in trust for your benefit or by any other means. Therefore, the scholarship would not meet the definition of a “gift,” as set forth in Sec. 112.313(12)(a), F.S.

Moreover, as previously noted, the WM Agreement expressly provided that scholarship award was contributed by WM “...to the City” and not to any particular individual. The Green Advisory Board then solicits and reviews applications from interested high school seniors and makes the determination which applicants will receive the scholarship. In other words, the scholarship award appears to be made by the City with funds provided by WM, rather than by WM directly to the scholarship recipients.

Therefore, in our opinion, even if the scholarship award were to be considered a “gift,” by definition, it would not be a gift from a vendor to your relative. Rather, if anything, it would be a gift from the City and to your daughters. Unlike the restrictions on gifts from lobbyists, vendors and contractors, the official capacity gift provisions under the Code of Ethics only applies to the elected official and not to their relatives. Furthermore, the \$50.00 limit on official capacity gifts does not apply to a governmental entity giving a gift to its own elected officials.

As noted, a prior informal opinion from the FCE general counsel had examined these issues within the scope of Ch. 112, F.S. A copy of the opinion is attached. The FCE did not even address this inquiry in the context of a gift analysis. As noted, the Broward County Code of Ethics has embraced the same definition of “gift” as set forth in Ch. 112, F.S. In other words, if the scholarship award would not be considered a gift under state law, it would similarly not be considered a gift under the Code of Ethics.

III. CONCLUSION

Based on the foregoing, it is the opinion of the City Attorney’s Office that your daughters are permitted to accept the scholarship award from the City and that such an acceptance does not run afoul of the Broward County Code of Ethics. The FCE’s general counsel has previously examined this issue in the context of Ch. 112, F.S., and determined that “you will not have a conflict of interest” based on the facts described related to the scholarship award.

Please be advised that this opinion is limited to the Broward County Code of Ethics for Elected Officials. 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.

Please contact our office if there is any additional information that we can provide.

Kimberly Longo

From: Jacob G. Horowitz
Sent: Monday, June 10, 2024 4:06 PM
To: Kimberly Longo
Subject: FW: Ethics Inquiry

Jacob G. Horowitz



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From: "Zuilkowski, Steven" <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Date: April 29, 2024 at 1:45:47 PM EDT
Subject: RE: Ethics Inquiry

Jacob,

Thank you for the email explaining the facts of the time-sensitive scenario. As we just discussed on the phone, the Commissioner will not have a conflict of interest under the facts as you describe them. Although her children might have a contractual relationship with the agency releasing the scholarship funds, the Commissioner herself will not, and she can't have a conflicting contractual relationship if she doesn't have a contractual relationship in the first place. Additionally, she won't be doing business with her own agency (the City). So, for those reasons, it appears she won't have a conflict under Sections 112.313(3) and (7)(a), F.S. You said on the phone that the awarding of the scholarships is not a vote that comes before the Commissioner, that vote goes before the Advisory Board. So it appears she won't have a voting conflict, which is a vote that inures to the special private gain or loss of her or her relatives, among others.

Some cautionary advice for everyone involved: She should avoid using her position to have any sway over the decision to award the scholarship, of course. I would also advise the members of the advisory board to follow whatever standards they have for awarding the scholarships and not use their positions to make an award that would not otherwise be made.

If you have any additional questions or concerns, or if we discussed something on the phone that I did not mention here, please let me know.

Steve

Steven J. Zuilkowski

Deputy Executive Director & General Counsel

Florida Commission on Ethics

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From: Jacob G. Horowitz <JHorowitz@gorencherof.com>
Sent: Friday, April 26, 2024 2:23 PM
To: Schafer, Grayden <SCHAFFER.GRAYDEN@leg.state.fl.us>
Cc: Lisa Mallozzi <LMallozzi@coopercity.gov>
Subject: FW: Ethics Inquiry

Gray,

Good afternoon. I left a message earlier this morning for one of your colleagues, but wanted to follow up with an email. Thank you for taking the time to review this Ch. 112, F.S., inquiry.

The City of Cooper City contracted with a vendor to provide solid waste hauling services in the City. As part the City's contract with the hauler, the hauler funded an annual scholarship in the amount of \$5,000. The City's Green Advisory Board ("Board") reviews applications from any and all interested high school seniors residing in the City on an annual basis and awards the scholarship money as it deems appropriate. The Board members are appointed by members of the City Commission.

This year the Board received seven (7) applications from high school seniors. Two (2) of the applicants are the twin children of Commissioner Lisa Mallozzi. The city commission plays no role in vetting or evaluating the applicants, and the scholarships are funded solely with the funds provided by the hauler. In other words, no City funds are included as part of the scholarship award.

The question is whether Commissioner Mallozzi's children are able to receive and accept a scholarship award. Note that the commissioner's children have a different last name than the commissioner and it is unknown how many, if any, of the Board members are even aware that two (2) of the applicants are related to a commission member.

Commissioner Mallozzi is aware that countless companies including Google, Pfizer, Coca-Cola, Exxon and Amazon all have scholarship programs that allow their employees to participate, and she wants to ensure that there is no ethical issue with her children accepting the scholarship award.

Please let me know if there is any additional information that we can provide. Commissioner Mallozzi is copied on this email, and she is also able to provide additional details, if needed.

Thank you.

Jacob G. Horowitz

<image006.jpg>

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