**CITY OF TALLAHASSEE**
**INDEPENDENT ETHICS BOARD**

AO 2021-05 – September 21, 2021

**SOLICITATION OR ACCEPTANCE OF GIFTS**
**ORD. NO. 2-15**

**PROCUREMENT EMPLOYEES RECEIVING DISCOUNTS FROM CITY VENDORS**

*To: Name withheld at person's request.*

**SUMMARY:**

Pursuant to the City of Tallahassee Ethics Code, all gifts, regardless of value, solicited or accepted by a covered individual from a lobbyist or vendor are prohibited. The term "gift" is defined by state statute, and the term "covered individual" is defined within the Tallahassee Ethics Code. Pursuant to local definition, a "covered individual" means a public official, one required to file a Form One financial disclosure form, and a "procurement employee."

**QUESTION #1:**

Does a procurement employee violate the Tallahassee Ethics Code ban on solicitation and acceptance of a gift if he or she receives a discount on personal cellular phone services when the discount is provided by Verizon Wireless, who is a city vendor?

Under the circumstances presented, the question is answered in the negative.

**BACKGROUND:**

The inquirer seeks advice on whether he or she may accept a discount for personal cellular phone services from Verizon Wireless, who is currently a city vendor, or if such act would constitute a violation of the Tallahassee Ethics Code.

Verizon Wireless is a division of Verizon Communications, Inc., formerly Atlantic Bell, one of the "Baby Bells." Verizon is a leading national telecommunications company and wireless network operator that offers, *inter alia*, cellular telephone service. As of 2021, Verizon is the largest wireless carrier within the United States.

The City of Tallahassee currently contracts with Verizon Communications to provide cellular phone service for employees acting within the scope of their employment. The City contract piggybacks onto the state contract managed through the Florida Department of Management Services, Contract No. DMS-10/11-008C. The initial state contract has been extended by multiple amendments, most recently in 2016 in what is identified as "Amendment 7."

Verizon Communications, along with other cellular providers, offers discounts to all government employees who hold personal cellular phone accounts through the company.

According to the Florida Department of Management Services, government employees may claim discounts from AT&T Mobility, Sprint, and Verizon Wireless. In the case of Verizon, existing and recently retired government employees are entitled to a 19% discount on service plans and 25% discount on accessories as well as to having activation fees waived.

Verizon Communications, as "Verizon Wireless," is listed as a vendor on the City of Tallahassee website.

**RULE AND ANALYSIS:**

The Tallahassee Ethics Code bars some public officials and city employees from soliciting and/or accepting gifts from specific donors. The applicable language reads as follows:

> No covered individual shall knowingly, directly or indirectly, accept or solicit a gift of any value from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lessee of city property, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the city, or from any potential vendor or lessee that is currently engaged in procurement or negotiations with the city or a bid protest

§ 2-15(a), CODE OF GENERAL ORDINANCES, City of Tallahassee (2021).

The definitions section of local ordinance does not provide a new definition for the term "gift," but rather refers to the state statute's definition as it may be amended from time to time. *See* § 2-4, CODE OF GENERAL ORDINANCES, City of Tallahassee (2021). The state definition, in part, is as follows:

> (a) "Gift," for purposes of ethics in government and financial disclosure required by law, means 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, including:
>
> 1. Real property.
> 2. The use of real property.
> 3. Tangible or intangible personal property.
> 4. The use of tangible or intangible personal property.
> 5. **A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is <u>not</u> either a government rate available to all other similarly situated government employees or officials** or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin.
> 6. Forgiveness of an indebtedness.

7. Transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking.
8. Food or beverage.
9. Membership dues.
10. Entrance fees, admission fees, or tickets to events, performances, or facilities.
11. Plants, flowers, or floral arrangements.
12. Services provided by persons pursuant to a professional license or certificate.
13. Other personal services for which a fee is normally charged by the person providing the services.
14. Any other similar service or thing having an attributable value not already provided for in this section.

§ 112.312(12), FLA. STAT. (2021) ***(emphasis added)***.

The definitions section continues to enumerate exclusions to the "gift" definition; however, an analysis of these exceptions is not necessary. The preceding definition explicitly provides that a preferential rate for services offered to all similarly situated government employees does not fall under the definition of gift.

As the terms of the contract under the Florida Department of Management Services provides for a discount to all government employees, the discount itself does not constitute a gift under the Tallahassee Ethics Code.

**QUESTION #2:**

Does a procurement employee violate the Tallahassee Ethics Code ban on solicitation and acceptance of a gift if he or she receives a discount on items purchased for personal use from The Shoe Box of Tallahassee, who is a city vendor?

Under the circumstances presented, the question depends on whether the discount is available to all similarly situated city employees.

**BACKGROUND:**

The inquirer seeks advice on whether he or she may accept a discount from The Shoe Box of Tallahassee on purchases made for his or her personal use or if such conduct would constitute a violation of the Tallahassee Ethics Code.

The Shoe Box, Inc. of Tallahassee is a local footwear company that also carries a wide selection of clothing. The Shoe Box offers all forms of footwear, including work boots, as well as

common shoe accessories. The Shoe Box also has a Certified Pedotorthist on staff to assist with customers seeking footwear or accessories necessary to address pain.

The City of Tallahassee currently contracts with The Shoe Box of Tallahassee, Inc., Contract No. 959. According to the inquirer, The Shoe Box generally offers a discount to all city employees for personal purchases. The inquirer does not specify the amount of the discount, but the language of the inquiry implies that the monetary discount is more than nominal.

The Shoe Box, Inc. of Tallahassee, as "The Shoe Box," is listed as vendors on the City of Tallahassee website.

**RULE AND ANALYSIS:**

The same prohibition of "covered individuals" receiving gifts from the lobbyists and vendors as previously discussed applies here. *See* § 2-15(a), CODE OF GENERAL ORDINANCES, City of Tallahassee (2021).

If it can be determined that the discount on personal purchases from The Shoe Box is made available to all similarly situated city employees, then the inquiry concludes with the same resolution as that above with Verizon Wireless.

The current contract between the City of Tallahassee and The Shoe Box is somewhat ambiguous to the issue of discounts for city employees. The language provides for the City and Contractor to negotiate prices for footwear made available to city employees. The contract explicitly states that the city will not pay for shoes in excess of the negotiated amount; however, city employees may supplement the amount due by using personal funds.

For instance, if the City and Contractor negotiated for a particular type of shoe to cost the City of Tallahassee only $50.00, but the city employee wished to purchase a $75.00 pair of shoes, the employee would be liable for only $25.00. In this case, the discount would be available to all similarly situated employees; therefore, the acceptance of said discount would not constitute a violation of the Tallahassee Ethics Code.

The website for The Shoe Box indicates that it also sells clothing and apparel; however, it does not appear that such items are subject to the contract. If the inquirer is wishing to accept a discount when purchasing clothing, he or she may be in violation of the local ethics code. This would require a more thorough analysis and likely more information than that available at this time.

As previously stated, the Tallahassee Ethics Code bars some public officials and city employees from soliciting and/or accepting gifts from specific donors.

> No covered individual shall knowingly, directly or indirectly, accept or solicit a gift of any value from any person or business entity that the recipient knows,

> or should know with the exercise of reasonable care, is a vendor, lessee of city property, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the city, or from any potential vendor or lessee that is currently engaged in procurement or negotiations with the city or a bid protest

§ 2-15(a), CODE OF GENERAL ORDINANCES, City of Tallahassee (2021).

The local prohibition on gifts only applies to "covered individuals," which are defined in ordinance as (1) public officials, (2) those required to file a state financial disclosure, and (3) "procurement employees." *See* § 2-4, CODE OF GENERAL ORDINANCES, City of Tallahassee (2021).

Procurement employees are defined as those who have "participated in the preceding 12 months through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities, if the cost of such services or commodities exceeds or is expected to exceed $10,000.00 in any fiscal year." *Id.*

The language in the ordinance is much stricter than its counterpart in state statutes, which requires some level of intent in order to constitute an ethics violation. The Tallahassee Ethics Code simply prohibits the act of soliciting or accepting a gift. The state statute goes a step further and requires a finding that there exists an understanding that an official action would be influenced by said gift. *See* § 112.313(2), FLA. STAT. (2020).

In sum, the monetary discounts in this matter would not be violations of gift ban under the state's ethics code; however, since the Tallahassee Ethics Code does not require a finding of intent or motivation, the local ordinance could bar such discounts if said discount met the statutory definition of "gift."

The Florida Commission on Ethics has reviewed numerous cases where government employees received discounts or complimentary goods, and in nearly all cases, the Commission found no violation under the state ethics code.

In Broward County, the Port Director, Deputy Port Director, and Port Commissioners with the Port Everglades Authority sought to purchase discounted tickets with a cruise line that paid tariffs to use the facilities at the Port. The cruise line offered discounts, not just to employees or officers of the Port, but to all persons associated with the travel industry. In this case, the Commission found that these individuals would not receive any preferential treatment or special rate beyond that publicly available to others in the travel industry. The individuals would in fact receive something of value; however, as a result of this broad application, the Commission found that there was no understanding or knowledge that the discounted rate meant to influence a decision. *See* CEO 89-31.

An analogous situation arose in Collier County where local restaurants and fast-food establishments consistently offered discounts to county paramedics and EMTs while on duty. The restaurants did not offer discounts to all county employees. The Commission on Ethics found that the discounts did not violate the gift statute, because there was no understanding that the gift was intended to influence an official act. *See* CEO 88-42.

The Commission has previously addressed the issue of discounted cellular telephone services for state employees. Officials and employees with the Department of Revenue were offered discounts for cellular telephone service from a company that hired a lobbyist to appear on its behalf before the Executive Branch. The lobbyist sent flyers to some of the offices at the Department, offering a 15% discount off its regular prices for phone services. The flyer stated that the offer was for government employees. The Commission found that Executive Branch agency officials and employees could accept the discount. While confirming that the discount was clearly a thing of value, the Commission found no facts to imply the discount was made to influence an agency decision. *See* CEO 06-18.

Finally, teachers in Naples, Florida were permitted to have their personal automobiles serviced at the school district's vocational technical center at discounted prices compared to those offered to the general public. As it applies to the gift statute, the Commission held that no violation occurred, because the offer was extended to all teachers and that there was no expectation of a favorable action by the teachers. The Commission elaborated that if the facts presented showed that the teachers received discounts with the expectation of better grades for the students performing the services, the outcome would be diametrically different. Again, the Commission's holding hinged on the motivation of the person giving the gift. *See* CEO 92-26.

It is important to note that this line of cases also reviewed other areas of the state's ethics code, specifically the prohibition of doing business with one's agency and restrictions on conflicting employment or contractual relationships. The Tallahassee Ethics Code does not contain language addressing those actions, so these issues we omitted from the above analysis.

The fact patterns presented above are remarkably similar to those before this Board. The discounts for personal purchases from The Shoe Box are offered to all city employees for footwear subject to the negotiated contract but possibly not for clothing and apparel. While there appears to be no intent by the donor to influence any actions by the donee, the local ordinance is drastically dissimilar from the state statute and does not require this element to be satisfied.

Section 2-15 prohibits the solicitation or acceptance of gifts by covered individuals from a group of potential donors. No other conditions are present in the local ordinance that would create a next step in the analysis. The prohibited act is limited to whether a "covered individual" received a gift, as defined by state law, from a vendor, lessee of city property, lobbyist or any principal of a lobbyist, or a potential vendor or lessee. Once this question is answered in the affirmative, the assessment is complete. The intent or motivations of the donor are immaterial under the local ordinance.

Accordingly, under the circumstances described above, the act of a city procurement employee accepting a discount on the price paid for a personal good or service provided by a city vendor would not violate the ban on solicitation or acceptance of gifts under the Tallahassee Ethics Code if said discount was available to all similarly situated city employees. If the discount was made available to this particular procurement employee but not similarly situated employees, the acceptance would constitute a violation of the Tallahassee Ethics Code, regardless of the intent or motivation of the donor.

**ORDERED** by the City of Tallahassee Independent Ethics Board meeting in public session on September 21, 2021, and **RENDERED** this 21st day of September, 2021.

APPROVED:

Carlos A. Rey, Chair
Tallahassee Independent Ethics Board

ATTEST:

DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:

JOHN LAURANCE REID
Board Counsel