

**CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD**

AO 2022-02 – March 15, 2022

**CONFLICT OF INTEREST/MISUSE OF PUBLIC POSITION
ORD. NO.: 2-8**

**MUST OR SHOULD THE CITY REQUIRE CITY VENDORS TO DISCLOSE
CAMPAIGN CONTRIBUTIONS TO TALLAHASSEE CITY COMMISSIONERS ON
CONFLICT OF INTEREST FORMS ASSOCIATED WITH BIDS**

*To: Ms. Veronica McCrackin
Manager, Procurement
City of Tallahassee*

SUMMARY:

The inquirer is the Procurement Manager for the City of Tallahassee. During the course of her employment, she has been directed to review conflict of interest forms used by other local governments to identify those that require city vendors to also report campaign contributions.

QUESTION 1:

Must the City of Tallahassee require city vendors to disclose campaign contributions to Tallahassee City Commissions on the City's conflict of interest forms associated with bids?

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

The state ethics code prohibits public officials from misusing their public positions. Specifically, public officials are prohibited from "corruptly" using or attempting to use "his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege benefit, or exemption for himself, herself, or others." § 112.313(6), FLA. STAT. (2021).

For purposes of the state ethics code, the term "corruptly" is defined as an act or omission "done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties." § 112.312(9), FLA. STAT. (2021).

While the statute fails to define "wrongful intent" as used in the preceding definition, the courts have defined the term to mean the public official "acted with reasonable notice that [his or] her conduct was inconsistent with the proper performance of her public duties and would be a

violation of the law or the code of ethics in part III of chapter 112.” See *Blackburn v. State*, 589 So. 2d 431, 434 (Fla. 1st DCA 1991).

In December 2019, the Tallahassee City Commission amended its ordinance prohibiting the misuse of public position. The new ordinance reads as follows:

No public official or employee of the city shall use or attempt to use his or her official position or any city property or resource which may be within his or her trust, or perform or fail to perform, his or her official duties, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special privilege, benefit, or exemption for himself or herself or others.

§ 2-8, *Tallahassee Code of Ordinances* (2022).

While the applicable ordinance addresses the “misuse of public position,” the language would also encompass acts that would objectively be viewed as conflicts of interest.

The act of receiving, or even soliciting, a campaign contribution does not itself constitute a misuse of public position by a public official. The acceptance of the contribution would need to be connected to an improper act by the public official in order to satisfy the Tallahassee Ethics Code’s prohibition on misuse of public position.¹ Likewise, the giving of a campaign contribution alone does not per se equate to an improper act by the donor even when said donor is a city vendor.

City vendors, whether business entities or individuals, have a constitutional right to exercise political speech by making political contributions. The U.S. Supreme Court has held that issues of campaign contributions involve the most fundamental of activities guaranteed under the First Amendment. *Buckley v. Valeo*, 424 U.S. 1, 14 (1976).

Although the First Amendment only prohibits restrictions on political speech by the federal government, these same protections are imposed upon the states and local governments by way of the Incorporation Clause of the Fourteenth Amendment. *Id.* at 15.

While it has been more permissive of government action restricting conduct intertwined with expression as opposed to pure speech, the U.S. Supreme Court has provided greater deference to the First Amendment when the limit on conduct would serve to suppress communication. *Id.* at 17; citing *United States v. O’Brien*, 391 U.S. 367 (1968) (upheld the conviction of individual who burned draft card in opposition to Vietnam conflict); *Cox v. Louisiana*, 379 U.S. 559 (1965) (distinguished between picketing and parading with pure speech, such as a newspaper comment and a telegram by a citizen to a public official).

¹ Furthermore, the local ban on public officials receiving gifts from lobbyists, city vendors, or lessees would not apply to this set of facts. The local ordinance prohibiting gifts refers to the definition of “gift” under state statute. State law explicitly excludes campaign contributions from the definition of a “gift.” See § 112.312(12), FLA. STAT. (2022).

The U.S. Supreme Court has held that when interpreting a government action's effect on the First Amendment, it must be interpreted to "give the benefit of any doubt to protecting rather than stifling speech." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 469 (2007), citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 269-70 (1964); see also *Citizens United v. FEC*, 558 U.S. 310, 327 (2010).

These broad limitations on government, however, do not prohibit narrowly applied regulations that serve a governmental interest. The U.S. Supreme Court has upheld disclaimer and disclosure requirements, finding said requirements to be justified because the government has an interest in providing "the electorate with information" about the sources of the political speech. *Buckley*, 424 U.S. at 66.

The inquirer seeks an answer as to whether the City must require city vendors to disclose political contributions in conflict of interest forms. The inclusion of the question is not mandated by the U.S. Constitution, federal or state statutes, or local ordinance.

Whether such a question would be permissible is subject to debate; however, its inclusion would likely be allowed. Generally, the U.S. Supreme Court has permitted disclosure requirements of campaign contributions; however, it balances the governmental interest versus the extent of the burden that such requirements impose on an individual. 424 U.S. at 68.

Under Florida law, candidates for city commission are required to report campaign contributions and expenditures. See Ch. 106, FLA. STAT. (2021). The campaign reports for Tallahassee City Commission candidates are filed with the Leon County Supervisor of Elections and made available to the public.²

One could argue that since the disclosure information sought is already readily available, the additional reporting requirement is duplicative and overly burdensome to the city vendor, imposing a chilling effect on the political speech.

During the 2021 Legislative Session, the Florida Legislature preempted local governments from enacting or adopting campaign limits inconsistent with state law. See § 106.08(11), FLA. STAT. (2021); see also § 1, Ch. 2021-16, LAWS OF FLA. (2021). These limits apply to monetary limits only and do not address reporting requirements.

QUESTION 2:

Should the City of Tallahassee require city vendors to disclose campaign contributions to Tallahassee City Commissioners on City conflict of interest forms associated with bids?

² See <https://www.leonvotes.gov/Candidates-Elected-Officials-and-Campaign-Finance/Campaign-Finance>.


As this question is one of policy, the Tallahassee Independent Ethics Board offers no opinion.

The Tallahassee Independent Ethics Board is a quasi-judicial body within the City of Tallahassee, authorized by the municipal charter. While the Tallahassee Charter explicitly grants the Board the authority to offer recommendations for ordinances changes to the Tallahassee City Committee, the Tallahassee Independent Ethics Board is not tasked with establishing city policy. Those responsibilities rest with the appropriate city personnel and ultimately with the Tallahassee City Commission.

Accordingly, under the circumstances described above, this Board offers no opinion to Question 2.

ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on March 15, 2022, and **RENDERED** this 15th day of March 2022.

APPROVED:


Carlos A. Rey (Mar 15, 2022 17:35 EDT)

Carlos A. Rey, Chair
Tallahassee Independent Ethics Board

ATTEST:

Dwight Floyd

DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:


Law Office of John Reid PLLC (Mar 16, 2022 11:48 EDT)

JOHN LAURANCE REID
Board Counsel