

CEO 19-17—October 30, 2019

**GIFT ACCEPTANCE AND DISCLOSURE****CITY OFFICIALS AND EMPLOYEES ACCEPTING  
THINGS OF VALUE FROM VARIOUS DONORS***To: Ms. Amy McKeever Toman, Deputy City Attorney (Tallahassee)***SUMMARY:**

For purposes of Section 112.3148, Florida Statutes, a city official or employee who files financial disclosure (a reporting individual) has received a "gift" from the city when they accept complimentary tickets to events sponsored in part by the city and hosted by for-profit or non-profit entities. As the gift involves a ticket(s), its valuation is controlled by Section 112.3148(7), Florida Statutes, and Rule 34-13.500, Florida Administrative Code. As there is no indication that the tickets are an indirect gift from a lobbyist or from a partner, firm, employer, or principal of a lobbyist who lobbies the city or a vendor of the city for purposes of Section 112.3148(4), Florida Statutes, the city officials and city employees may accept the ticket(s), but where the combined face value of the tickets accepted by a reporting individual exceeds \$100, the reporting individual must disclose them pursuant to Section 112.3148(8), Florida Statutes. Further, tickets or admissions to VIP events or to early performances not otherwise available to the public and given to public officers and employees who file financial disclosure would be considered gifts. Also, where a reporting individual receives complimentary tickets to fundraising events held by non-profit entities that receive funding from the city, the ticket(s) would constitute an indirect gift from the non-profit, which could be accepted provided that the non-profit is not a lobbyist or the partner, firm, employer, or principal of a lobbyist who lobbies the city or a vendor of the city, but the tickets must be disclosed quarterly on a CE Form 9. Further, pursuant to Section 112.3148(7)(h), Florida Statutes, and Rule 34-13.500(5)(d), Florida Administrative Code, the value of a ticket to a charitable fundraising event is the face value of the ticket or if no face value was provided the published cost of admission to persons with similar tickets. Referenced are CEO [91-57](#), CEO [92-33](#), CEO [93-27](#), CEO [94-27](#), CEO [95-36](#), CEO [96-2](#), CEO [04-12](#), CEO [13-2](#), CEO [13-3](#), CEO [16-1](#), CEO [16-10](#), and CEO [17-13](#).<sup>1</sup>

**QUESTION 1:**

Would tickets to events held by non-profit or for-profit entities, paid for by the City via a sponsorship contribution, and given by the City to public officers and employees who file financial disclosure be considered gifts?

Question 1 is answered in the affirmative.

In your letter of inquiry and in additional correspondence and conversations with our staff, you relate that you are requesting this opinion on behalf of a City and its public officers and employees. In your inquiry you posit several scenarios wherein tickets, admissions to VIP events, or other things of value are being given to public officers and employees of the City who file financial disclosure ("reporting individuals"). Your first and second factual scenarios involve an event hosted by a non-profit or for-profit entity wherein the City has purchased a sponsorship for the event. You relate that in return for the sponsorship payment the City is provided with a benefits package, commensurate with its sponsorship contribution level, which contains an array of marketing and event benefits. The event benefits include tickets to the event, tickets or admissions to a VIP reception, access to tangible items such as food and beverages served during the event, and event trinkets. You state that tickets to the event often, but not always, reflect a face value and are usually accessible to the public via the purchase of a ticket at a published cost. You state that following the payment of the sponsorship funds,



the City Manager offers the tickets to elected and appointed City officials and then to the City's leadership team, most of whom file financial disclosure. In light of the foregoing, you inquire whether the tickets would be gifts to the City public officers and employees who accept them, and, if so, the methodologies for valuing the tickets or admissions.

Section 112.312(12)(a), Florida Statutes, in pertinent part, defines the term "gift" as follows:

'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 his benefit or by any other means, for which equal or greater consideration is not given, including:

10. Entrance fees, admission fees, or tickets to events, performances, or facilities.

14. Any other similar service or thing having an attributable value not already provided for in this section.

In CEO [92-33](#) the Commission analyzed a situation wherein city commissioners received free tickets provided by the city to touring Broadway shows staged at the city-owned auditorium, as well as numerous tickets to other events and performances. There, the Commission rejected the city's arguments that the tickets were "gifts" to the city or a benefit associated with the commissioners' public offices and thus exempted from the definition of "gift." Rather, the Commission concluded that the complimentary tickets were a permissible "gift" from the city received by city commissioners which would need to be reported if the combined value of the number of tickets received by a particular reporting individual exceeded \$100. Similarly, under the circumstances described herein, tickets to an event provided at no cost to public officers or public employees are a "gift" for purposes of Section 112.312(12)(a), Florida Statutes.

However, in the instant matter, prior to the event, the City purchased a sponsorship package containing marketing and events benefits (including tickets) and thereby paid equal or greater consideration for the tickets and other things of value associated with their sponsorship of the event.<sup>2</sup> Following the City's purchase of the sponsorship, the opportunity to attend the event, at no cost to the recipient, was afforded to elected and appointed City officials and then to members of the City's leadership team on a first-come, first-served basis.<sup>3</sup> Thus, in the instant scenario the City is the "donor" of the tickets for the purposes of the application of the gifts analysis.<sup>4</sup>

The focus of our discussion then turns to portions of Section 112.3148, Florida Statutes, which provides in relevant part:

"Lobbyist" means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency. [Section 112.3148(2)(b)1, Florida Statutes.]

"Vendor" means a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services. [Section 112.3148(2)(f), Florida Statutes.]

A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in



excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift. [Section 112.3148(4), Florida Statutes]

Each reporting individual or procurement employee shall file a statement with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less, except the following:

1. Gifts from relatives.
2. Gifts prohibited by subsection (4) or s. 112.313(4).
3. Gifts otherwise required to be disclosed by this section. [Section 112.3148(8), Florida Statutes]

Subsection 112.3148(4) would prohibit a "reporting individual"<sup>5</sup> from accepting a gift with a value in excess of \$100 from a vendor of the City, a lobbyist who lobbies the City, from the partner, firm, employer, or principal of such a lobbyist, or from certain others listed in the statute. The Commission has often found that although public employees can and do attempt to influence the official actions of the officers of their public agency, such individuals are not encompassed within the definition of "lobbyist" as their duties with respect to their own agencies do not constitute "lobbying." See CEO [92-33](#). Nor is there any indication that the City Manager in this instance is acting on behalf of a partner, firm, employer, or principal of a lobbyist who lobbies the City, or on behalf of a vendor of the City. Accordingly, it is our view that Section 112.3148(4), Florida Statutes, is inapplicable to this scenario, one in which tickets purchased by the City are given via the City Manager to City reporting individuals.<sup>6</sup>

However, Section 112.3148(8)(a), Florida Statutes, provides that reporting individuals are required to disclose the receipt of allowable gifts from non-prohibited donors if they exceeded \$100 in value. This disclosure should be made on our CE Form 9, Quarterly Gift Disclosure, by the last day of the calendar quarter that follows the calendar quarter in which the gifts were received. Section 112.3148(7) provides the valuation criteria governing specific circumstances or specific types of gifts. See CEO [91-57](#), CEO [13-3](#), CEO [16-1](#), and CEO [16-10](#). With regard to valuation, Section 112.3148(7), Florida Statutes, provides in pertinent part:

(a) The value of a gift provided to a reporting individual or procurement employee shall be determined using actual cost to the donor, less taxes and gratuities, except as otherwise provided in this subsection, and, with respect to personal services provided by the donor, the reasonable and customary charge regularly charged for such service in the community in which the service is provided shall be used. If additional expenses are required as a condition precedent to eligibility of the donor to purchase or provide a gift and such expenses are primarily for the benefit of the donor or are of a charitable nature, such expenses shall not be included in determining the value of the gift.

\* \* \*

(h) Entrance fees, admission fees, or tickets shall be valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.

\* \* \*

(k) The value of a gift of an admission ticket shall not include that portion of the cost which represents a charitable contribution, if the gift is provided by the

charitable organization.

In addition, in Chapter 34-13, Florida Administrative Code, the Commission has promulgated rules to further elucidate the gift valuation principles expressed in Section 112.3148(7). Rule 34-13.500(5) states, in pertinent part:

A ticket, entrance fee, or admission fee, such as a golf greens fee, which admits the donee to an event, function, or activity, is valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.

(a) An "event" includes a series of related functions happening on consecutive days. If a series of tickets are given at the same time, such as a football season ticket, the value of the gift is the face value of all the tickets combined.

\* \* \*

(d) The value of a ticket to a charitable event where a portion of the proceeds go to charity is the value expressed on the face of the ticket.

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(e) A ticket where no value is expressed on the face of the ticket should be valued on a daily or per event basis, whichever is greater, i.e., the cost of admission to persons with similar tickets, regardless of the cost to the donor.

In the instant scenario, you relate that the tickets to the events often reflect a dollar value. When the ticket provided by the City to its reporting individuals reflects a dollar value, the value of the gift/ticket is the face value of the ticket times the number of tickets accepted by a reporting individual. See CEO [92-33](#). You further relate that even when no face value is reflected on a particular ticket or admission to an event, a member of the general public seeking to independently obtain access to such an event could do so via the purchase of a public ticket at a published cost. In such a scenario, the value of the gift/ticket would be the published cost of admission to persons with similar tickets, multiplied by the number of tickets or admissions accepted by the reporting individual. See CEO [95-36](#) and CEO [96-2](#).

Because the situation you describe is not unique, we would like to take this opportunity to make additional observations about the valuation principles in Section 112.3148(7) in this context. Even if the event benefits a non-profit organization, Section 112.3148(7)(k) is not applicable here because the gift/tickets are not being given to City officials or employees by a charitable organization. See CEO [04-12](#). Only when the donor of the gift is a charitable organization can the recipient deduct that portion of the gift that represents a charitable contribution. Therefore, Section 112.3148(7)(k) is not applicable to the facts in Question 1.

As the donor, here the City itself, is not an otherwise prohibited donor, pursuant to Section 112.3148(4), Florida Statutes, the public officers and employees of the City accepting tickets, admissions, or other things of value from the City regarding these events would not be prohibited from accepting them, even if the value thereof exceeds \$100. However, pursuant to Section 112.3148(8), Florida Statutes, where the value of the tickets or admissions provided to a reporting individual exceeds \$100, the public officer or employee must disclose the gift(s) quarterly on CE Form 9.

Question 1 is answered accordingly.

## QUESTION 2:

Would tickets or admissions to VIP events or to early performances not otherwise available to the public and given to public officers and employees who file financial disclosure be considered gifts?



Question 2 is answered in the affirmative.

In the next scenario you describe an event wherein the City is the primary organizer and/or sponsor. You state that other public and private entities also provide sponsorship contributions regarding the event. You relate that for the public, the event is free or a "suggested donation" is requested and all profits generated are donated to a non-profit entity. However, you state that in association with the event the City provides or receives tickets to a VIP activity or early performance not otherwise available to the public. Thereafter, the City Manager distributes tickets to attend the VIP events, at no cost, to elected and appointed City public officers and then to the City's leadership team, who file financial disclosure.

Of paramount import in such a scenario is the identity of the donor of the tickets or admissions. As noted above, Rule 34-13.200(1), Florida Administrative Code, defines "donor" as the "person or entity who provides or pays for the gift, whether directly or indirectly." If the City has paid for the cost of the VIP event or performance, and thereafter distributed VIP tickets or admissions to public officers or employees who file financial disclosure, then the City is the donor. For the reasons described in Question 1, if the City is the donor, pursuant to Section 112.3148(4) City officials and employees who file financial disclosure would not be prohibited from accepting the tickets or admissions, even if the value thereof exceeds \$100, however, pursuant to Section 112.3148(8), the gift(s) would need to be reported if the combined value of the number of tickets received by a particular reporting individual exceeded \$100.

Conversely, if a third-party sponsor has paid for the VIP event or performance and thereafter provided VIP tickets to the City for distribution to City officials and personnel who file financial disclosure, then the third-party is the donor and the tickets constitute an indirect gift from the third-party to the reporting individuals. See CEO [93-27](#), CEO [13-3](#), and Rule 34-13.310(8), Florida Administrative Code.<sup>7</sup> Section 112.3148(4), Florida Statutes, prohibits a reporting individual from accepting, directly or indirectly, a gift from a lobbyist of his or her own agency, the partner, firm, employer, or principal of such a lobbyist, a vendor of his or her agency, or certain others, if the gift has a value that exceeds \$100. Thus, a City official or employee who files financial disclosure may not accept tickets or any other gift that is valued at more than \$100, from a third-party donor, if that person or entity is a lobbyist, the partner/firm/employer/principal of a lobbyist, or a vendor of the City. If, however, the third-party donor of the tickets or admissions is not a lobbyist, the partner/firm/employer/principal of a lobbyist, or a vendor of the City, the public officer or employee may accept the tickets or admissions, but pursuant to the requirements of Section 112.3148(8), Florida Statutes, must report the tickets/gifts on CE Form 9 if the value thereof exceeds \$100.

Question 2 is answered accordingly.

### QUESTION 3:

Would tickets to fundraising events hosted and sponsored by non-profits that receive funding from the City and given to public officers and employees who file financial disclosure be considered gifts?

Question 3 is answered in the affirmative.

In your final factual scenario you state that as part of its annual budget the City provides funding to several non-profit entities. You state that if the non-profit organization also has a fundraising event during the fiscal year, the City will not purchase tickets or otherwise sponsor such an event, but it will ask the non-profit to recognize the City as a sponsor of the event, based on the funding provided by the City via the annual budget process. You relate that the funding is in no way contingent on the non-profit's recognition of the City.<sup>8</sup> Further, you state that the City is periodically given unsolicited, complimentary tickets by the non-profits to its fundraising events for distribution to specific City public officers and employees. In such instances, the City Manager offers the tickets to elected and appointed City officials and then to the City's leadership team on a first-come, first-served basis.

Here, it would appear that the tickets to a non-profit's fundraising event are provided to the City with the intent to benefit only elected and appointed City officials and City employees on the City's leadership team, who



are reporting individuals. Therefore, the tickets are an "indirect gift" from the non-profit entity for the purposes of Section 112.3148(4), Florida Statutes, and Rule 34-13.310(8), Florida Administrative Code.

Thus, the donee must determine if the particular non-profit donor providing the ticket(s) is a "lobbyist,"<sup>9</sup> the partner, firm, employer, or principal of a lobbyist, or a vendor of the City. Pursuant to the requirements of Section 112.3148(4), Florida Statutes, where the non-profit donor is a lobbyist, the partner, firm, employer, or principal of a lobbyist, or a vendor of the City, then the public officer or employee may not accept tickets or any gift from the non-profit that is valued at more than \$100.<sup>10</sup> If however, the non-profit donor of the tickets or admissions is not a lobbyist, the partner/firm/employer/principal of a lobbyist, or a vendor of the City, the public officer or employee may accept the tickets or admissions, but pursuant to the requirements of Section 112.3148(8), Florida Statutes, must report the tickets/gifts on CE Form 9 if the value thereof exceeds \$100.<sup>11</sup>

Question 3 is answered accordingly.

#### QUESTION 4:

How would tickets or admissions to an event hosted by a non-profit entity be valued, where the City has purchased a sponsorship for the event, a portion of which was identified as tax deductible, and thereafter received a sponsorship benefits package including radio and print advertising recognizing the City as a sponsor of the event, as well as several tickets or, alternatively, access to a table at the event?

Question 4 is answered as set forth below.

Similar to the facts present in Question 1, you inquire in Question 4 regarding an event hosted by a non-profit entity wherein the City has purchased a \$1,000 sponsorship for the event. Following the City's purchase of the sponsorship, it is stated that \$914 of the \$1,000 sponsorship is tax deductible. You relate that in return for the sponsorship payment the City is provided with a benefits package, commensurate with its sponsorship contribution level, which contains an array of marketing and event benefits. The marketing and event benefits provided to the City in light of its sponsorship contribution include radio advertising recognizing the City as a sponsor prior to the event, as well as signage on the tables and on the printed program at the event, and several tickets or, alternatively, access to a table at the event. You state that the published price for a ticket to the fundraising event is \$125. Following the payment of the sponsorship funds, the City Manager offers complimentary tickets to elected and appointed City officials and then to the City's leadership team, who file financial disclosure.

As analyzed in Question 1, tickets to an event provided at no cost to public officers or public employees are a "gift" for purposes of Section 112.312(12)(a), Florida Statutes, as it constitutes an admission to an event. See Section 112.312(12)(a)10, Florida Statutes. Further, prior to the event, the City purchased a sponsorship package containing marketing and events benefits (including tickets) and thereby paid equal or greater consideration for the tickets and other things of value associated with its sponsorship of the event. The City, via its City Manager, then afforded elected City officials and members of the City's leadership team access to complimentary tickets or admissions to the non-profit's fundraising event. Thus, the City is the "donor" of the tickets for the purposes of the application of the gifts law contained in Section 112.3148, Florida Statutes. As there is no indication that the tickets are an indirect gift from a lobbyist or from a partner, firm, employer, or principal of a lobbyist who lobbies the City or a vendor of the City for purposes of Section 112.3148(4), Florida Statutes, the City officials and City employees on the leadership team may accept the ticket(s), but where the combined face value of the tickets accepted by a reporting individual exceeds \$100, the reporting individual must disclose them quarterly on a CE Form 9 pursuant to Section 112.3148(8), Florida Statutes.

Section 112.3148(7), Florida Statutes, provides in relevant part:

(a) The value of a gift provided to a reporting individual or procurement employee shall be determined using actual cost to the donor, less taxes and gratuities, **except as otherwise provided in this subsection**, and, with respect to personal services provided by the donor, the reasonable and customary charge regularly charged for such service in the community in which the service is



provided shall be used. **If additional expenses are required as a condition precedent to eligibility of the donor to purchase or provide a gift and such expenses are primarily for the benefit of the donor or are of a charitable nature, such expenses shall not be included in determining the value of the gift.** [emphasis added]

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(h) Entrance fees, admission fees, or tickets shall be valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.

With respect to the valuation of the tickets accepted by City officials and employees, at no cost to them (the ultimate recipient of the tickets), you inquire with particularity as to the applicability and impact of the last sentence of Section 112.3148(7)(a), Florida Statutes, and whether this sentence affords the City, here the donor of the tickets, with the ability to deduct either the portion of the sponsorship contribution which has been identified as tax deductible or the cost of the marketing benefits obtained by the City, from the overall value of the \$1,000 sponsorship contribution, and thereby reduce the value of the tickets or admissions received by City officials and employees.

In CEO [95-36](#), the Commission on Ethics opined that Section 112.3148(7)(a), Florida Statutes, sets forth the general principle that gifts are to be valued in accordance with the "actual cost to the donor." See also CEO [04-12](#) and CEO [16-10](#). The latter provisions of Section 112.3148(7) then provide more specific valuation criteria governing specific circumstances or specific types of gifts. The Commission further observed that according to the usual principles of statutory construction, where a specific statute is applicable in determining the value of a gift, that statute will control over the more general statute and, rather than a gift being valued based on the cost to the donor, the value will more closely approximate fair market value. Thus, in CEO [95-36](#), the Commission concluded that the value of the basketball tickets the legislator received was the cost of admission to persons with similar tickets. See also CEO [04-12](#).

In the instant scenario, as an event sponsor the City has paid \$1,000 and that level of sponsorship entitled the City to receive several forms of advertising benefits and tickets or admissions to an event. You represent that a member of the public could purchase an individual ticket to the event for \$125.

As noted in Question 1, the Commission has promulgated rules in Chapter 34-13, Florida Administrative Code, to further elucidate the valuation principles expressed in Section 112.3148(7), Florida Statutes. Rule 34-13.500(5)(d) and (e) provide:

(d) The value of a ticket to a charitable event where a portion of the proceeds go to charity is the value expressed on the face of the ticket.

(e) A ticket where no value is expressed on the face of the ticket should be valued on a daily or per event basis, whichever is greater, i.e., the cost of admission to persons with similar tickets, regardless of the cost to the donor.

Further, Rule 34-13.500(7), provides additional elucidation pertaining to the meaning of the last sentence of Section 112.3148(7)(a), Florida Statutes. Rule 34-13.500(7) provides:

(7) Where the donor is required to pay additional expenses as a condition precedent to being eligible to purchase or provide the gift, and where the expenses are for the primary benefit of the donor, or where the expenses are of a charitable nature, such expenses will not be included in determining the value of a gift provided to a donee. The provisions of this subsection may be illustrated by the following example:

Example: Lobbyist G ("G"), who lobbies the agency of Reporting Individual Q ("Q"), is a member at a country club and is required to pay an annual membership fee of \$1,000 to the country club. Where G takes Q to play a round of golf at the country club, the cost of G's annual membership is a condition precedent to G being a



member of the country club and is primarily for G's benefit. Thus, the \$1,000 annual membership fee is not included in the cost of the round of golf G provided to Q.

The statutory language of Section 112.3148(7)(a) and the valuation principles contained in Rule 34-13.500(7), allow for the deduction of costs from the value of a gift which constitute additional expenses that are required as a condition precedent to eligibility of the donor to purchase or provide a gift and which are for the primary benefit of the donor or which are charitable in nature. For example, in CEO [94-43](#), the Commission found that the portion of an annual skybox leasing fee which was paid to the FSU Foundation, Inc., and which constituted a condition precedent to the eligibility of the leasee to lease the skybox, could be deducted from the value of skybox seats for the purposes of valuation pursuant to the valuation provisions of Section 112.3148(7)(a), Florida Statutes.

However, the facts in the instant scenario do not involve additional expenses required as a "condition precedent to eligibility of the donor to purchase or provide a gift" akin to an annual membership fee or an annual skybox leasing fee. Rather, the facts in Question 4, like Question 1, merely involve the City, like all other individual and corporate sponsors of the event, purchasing a sponsorship package which contains several things of value to the City, including advertising associated with, and tickets to, a charitable event. Thus, we do not believe that it would be appropriate to "back out" the cost of the sponsorship contribution which the charity has identified as tax deductible or the cost of radio and print advertising received by the City, the valuation of which is not specifically itemized. Rather, we believe that the valuation provisions of Section 112.3148(7)(h) is the more appropriate methodology to be applied to the instant facts. See also CEO [04-12](#) (wherein the Commission found that it was not appropriate to "back out" the cost of certain items provided to attendees of a charitable golf tournament which were not attributable to the individual public officer and instead found that the correct valuation methodology was the face value of the ticket or if no face value was provided the published cost of admission to persons with similar tickets). In the instant scenario, the published cost of an individual ticket to the event is \$125, therefore, we believe that \$125 is the value of the gift.

Question 4 is answered accordingly.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on October 25, 2019, and **RENDERED** this 30th day of October, 2019.

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Kimberly B. Rezanka, *Chair*

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<sup>[1]</sup> Prior opinions of the Commission on Ethics can be viewed at [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

<sup>[2]</sup> The analysis contained in Questions 1 and 4 is predicated upon the City's payment of a sponsorship contribution to the event organizers which represents equal or greater consideration for the event benefits received.

<sup>[3]</sup> A very different factual scenario exists when a public officer or employee pays equal or greater consideration for tickets or other things of value either prior to, or within 90 days of, the receipt of the gift. See Section 112.312(12)(a) and Section 112.3148(7)(b), Florida Statutes. Where a public officer or public employee has paid the full and fair market value for tickets, they would not constitute a "gift" under either Section 112.312(12) or Section 112.3148, Florida Statutes. See CEO [17-13](#) and CEO [13-2](#). In all of the factual scenarios raised by the City in this inquiry, there are no facts present which indicate that the public officers or public employees who are the ultimate recipients of the tickets or admissions have provided any consideration of any kind to any donor.

<sup>[4]</sup> Rule 34-13.200(1), Florida Administrative Code, defines "donor" as the "person or entity who provides or pays for the gift, whether directly or indirectly."

<sup>[5]</sup> At the local government level, the provisions of Section 112.3148, Florida Statutes, apply only to "reporting individuals," which Section 112.3148(2)(d), Florida Statutes, defines to mean persons who file financial disclosure.

<sup>[6]</sup> Section 112.3148(3), Florida Statutes, which prohibits the solicitation of gifts from a lobbyist, the partner, firm, employer, or principal of a lobbyist, a vendor of one's agency, or certain others, is apparently inapplicable as there are no facts present in any factual scenario raised



in this inquiry indicating that any public officer or employee of the City has engaged in any activities that constitute solicitation.

[7]On the issue of indirect gifts, Rule 34-13.310(8), Florida Administrative Code, provides in relevant part:

(a) Where a gift is provided to a person other than the reporting individual or procurement employee by a political committee or vendor, by a lobbyist who lobbies the agency of the reporting individual or procurement employee, or by the partner, firm, employer, or principal of a lobbyist, where the gift or the benefit of the gift ultimately is received by the reporting individual or procurement employee, and where the gift is provided with the intent to benefit the reporting individual or procurement employee, such gift will be considered an indirect gift to the reporting individual or procurement employee.

(b) Where a gift or the benefit of a gift is provided to a reporting individual or procurement employee by someone other than a political committee, a lobbyist, or the partner, firm, employer, or principal of a lobbyist, or a vendor, but the gift or the expense of the gift has been provided by or paid for by a political committee, a vendor, or a lobbyist, or the partner, firm, employer, or principal of a lobbyist, who intends thereby to benefit the reporting individual or employee, such gift will be considered an indirect gift to the reporting individual or procurement employee.

(c) Factors which the Commission will consider in determining whether an indirect gift has been made include but are not limited to:

1. The existence or nonexistence of communications by the donor indicating the donor's intent to make or convey the gift to the reporting individual or procurement employee rather than to the intervening third person;
2. The existence or nonexistence of any relationship between the donor and the third person, independent of the relationship between the donor and the reporting individual or procurement employee, that would motivate a gift to the third person;
3. The existence or nonexistence of any relationship between the third person and the reporting individual or procurement employee that would motivate the gift.
4. Whether the same or similar gifts have been or are being provided to other persons having the same relationship to the donor as the third person;
5. Whether, under the circumstances, the third person had full and independent decision-making authority to determine whether the reporting individual or procurement employee, or another, would receive the gift;
6. Whether the third person was acting with the knowledge or consent of, or under the direction of, the donor;
7. Whether there were or were intended any payments or bookkeeping transactions between the third person and the donor, reimbursing the third person for the gift; and
8. The degree of ownership or control the donor has over the third person.

[8]Although the facts of this inquiry make it clear that a non-profit's funding is in no way contingent upon its willingness to provide recognition to the City at its fundraising events, and thus, is not implicative of the provisions of the Code of Ethics, we caution that the import of the funding relationship between the City and the non-profit may intimidate or coerce non-profit entities into providing such gratuitous advertising, despite a lack of any wrongful intent on any City official's part.

[9]See Section 112.3148(2)(b), Florida Statutes, and Rule 34-13.240, Florida Administrative. Code.

[10]As noted above, the City has indicated that neither it, nor any City official or employee, engages in any activities that involve soliciting complimentary tickets from any funded non-profit entity to its fundraising events. Nevertheless, and without in any way intending to suggest doubt as to any City official's or employee's personal integrity, we caution that City officials and employees must continue to be cognizant of and comply with the provisions of Sections 112.313(2), 112.313(4), and 112.3148(3), Florida Statutes. Section 112.313(2) prohibits a public officer or employee from soliciting or accepting anything of value to the recipient based upon the understanding that their official actions will be influenced thereby, while Section 112.313(4) prohibits a public officer or employee or their spouse or minor child from accepting anything under circumstances where the public officer or employee knows or should know that it is being given in an effort to influence the public officer or employee. Further, Section 112.3148(3) prohibits a reporting individual or procurement employee from soliciting a gift, of any value, from a vendor of his or her agency, a lobbyist of his or her agency, the partner, firm, employer, or principal of such a lobbyist, or certain others, if the gift is for their own benefit, that of another reporting individual, or that of any member of the immediate family of a reporting individual.

[11]As the donor of the tickets in this factual scenario is a charitable organization, the provisions of Section 112.3148(7)(k), Florida Statutes, which permit a gift recipient to deduct that portion of the gift that represents a charitable contribution, apparently could be applicable in the valuation of tickets to a non-profit's fundraising event and given by the non-profit charitable organization. CEO [04-12](#).