

Appendix C2

Restrictions on Receipt of Gifts and Honoraria for "Specified State Employees" and "Procurement Employees"

SUMMARY

University of Florida employees involved in contracting (including purchasing) for the university should be aware of restrictions placed on their receipt of gifts and honoraria from lobbyists and lobbyists' firms.

Affected employees may not solicit any gift from a lobbyist nor may they accept gifts of a value greater than \$100 from a lobbyist. Affected employees may not solicit an honorarium from anyone if the honorarium is related to the employee's duties. They may not accept honoraria from a lobbyist although they may accept payment for their expenses for attending an honorarium event.

EMPLOYEES AFFECTED BY THE LAW

The laws concerning gifts and honoraria discussed in this appendix apply to University of Florida employees who are considered under Florida law to be either "specified state employees" (also called "reporting individuals") or "procurement employees." "Specified state employees" or "reporting individuals" are required to disclose certain financial interests and gifts on a yearly basis under the provisions of Florida law. Specified employees include business managers, purchasing agents (persons with signature authority for contracts) having the power to make any purchases exceeding the threshold for Category One purchases (currently \$15,000), finance and accounting directors, personnel officers, grant coordinators, legal counsel, and the president of the university. Those persons identified by the university as "specified state employees" should receive an annual disclosure form for financial interests from the Commission on Ethics by July 1. In addition to making that disclosure these employees must also comply with the restrictions and requirements concerning gifts and honoraria described in this appendix.

"Procurement employees," who need not necessarily make an annual disclosure of financial interests, must also comply with these restrictions and requirements. A "procurement employee" is defined as a state employee "who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of 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 \$1,000 in any year." The category of procurement employee is considerably broader than that of specified state employees. It includes employees who have any part in making decisions concerning a purchase or the auditing or investigation of the purchase. For example, a faculty member who recommends that

a certain piece of equipment be purchased may be considered a procurement employee although he would not be considered a specified state employee.

DEFINITION OF "LOBBYIST"

A "lobbyist" is defined as a person who "is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying." "Lobbying" means "seeking, on behalf of another person [a company or firm as well as a natural person], to influence" the University with respect to a decision of the University in the area of general policy or procurement (making purchases for the University) or "an attempt to obtain the goodwill" of a university employee. A person who is principally employed for governmental affairs by another person or entity to lobby on behalf of that other person or entity is also considered a lobbyist.

A lobbyist does not include an attorney or other representative in any hearing or proceeding of the university, an employee of the university acting in the normal course of the employee's duties, a confidential informant to law enforcement, or a person lobbying to secure a contract for purchases at the Category One level as defined under state purchasing law.

Lobbyists are required to register and make quarterly reports to the State of Florida Commission on Ethics.

GIFTS

The term "gift" has been comprehensively defined in the law to mean anything accepted by an employee, by another person on the employee's behalf, or directly or indirectly paid or given to the employee when equal or greater payment is not given within 90 days of receipt. A promise to pay or otherwise provide something of value will not be considered a payment "unless the promise is in writing and enforceable through the courts." The following, for example, may be considered gifts: real property; the use of real property; personal property; personal services; preferential rates or terms on a debt, loan, goods or services; forgiveness of a debt; transportation, lodging, or parking; food or beverages; membership dues, entrance fees, admission fees, or tickets to events; and plants, flowers, or floral arrangements. The term "gift" does not include certain items such as honoraria (which are addressed below) and awards given in recognition of public, civic, charitable or professional service.

Both specified state employees and procurement employees are prohibited from soliciting any gift from a lobbyist or the employer, firm, partner or principal of a lobbyist, from a political committee, or a committee of continuous existence as certified by the Division of Elections.¹ Specified state employees and procurement employees are also prohibited from knowingly accepting, directly or indirectly, any gift which has a value in excess of \$100 from a lobbyist.

A lobbyist is also prohibited from giving, either directly or indirectly, a gift that has a value in excess of \$100 to a specified state employee or procurement employee. The only exception to

¹ For the sake of simplicity, the word "lobbyist" will be used throughout the remainder of this discussion with the understanding that it encompasses PAC's and the other entities described.

this prohibition occurs when the gift is intended to be given or accepted on behalf of the governmental entity itself or a charitable organization (i.e., the University of Florida or the University of Florida Foundation). However, in such cases the gift must be immediately transferred to the university or the foundation.

There are a few exceptions to these gift restrictions. The restrictions do not apply to gifts solicited or accepted from a "relative" as defined in the legislation, nor gifts primarily associated with outside employment. Further, a state agency or other state or local governmental entity may give a gift in excess of \$100 to a specified state employee or procurement employee if a public purpose can be shown for the gift. In addition, a direct support organization, such as the University of Florida Foundation, the University of Florida Research Foundation, or the University Athletic Association, may give such a gift to a specified state employee or procurement employee when that employee is employed by the government entity which the direct support organization supports. For example, the University of Florida Foundation could give a gift to a University of Florida employee. The governmental entity and direct support organization must report these gifts annually to the employee. The report must be made by March 1 of each year for the preceding calendar year. The employee, in turn, must file an annual statement describing these gifts with the Department of State. These annual reports are to be made by July 1.

Each procurement employee and specified state employee is required to file a quarterly disclosure of all gifts in excess of \$100 except gifts otherwise reported or gifts from relatives. This requirement is in addition to the annual report of gifts from governmental entities and direct-support organizations described in the previous paragraph.

HONORARIA

Significant restrictions are imposed on the ability of procurement employees and specified state employees to receive honoraria. Under the law, the term "honorarium" means a payment of money or anything of value to a specified state employee or a procurement employee (or to any other person on his or her behalf) for a speech or other oral presentation, whether presented in person, via broadcast or recorded, or a "writing," other than a book, which is to be or is intended to be published. The term does not include payments for services related to outside employment or ordinary salary payments for services related to the employee's public duties, nor does the term honorarium include the payment of reasonable transportation, lodging, and food and beverage expenses for the employee and the employee's spouse related to an honorarium event.

A specified state employee or procurement employee may not solicit (ask for) an honorarium which is related to his or her public office or duties from anyone, including a lobbyist. The law prohibits a specified state employee or procurement employee from knowingly accepting an honorarium from a lobbyist who lobbies the specified state employee or procurement employee's agency. A lobbyist is likewise prohibited from giving an honorarium to a specified state employee or procurement employee.

If an honorarium is offered by a lobbyist, the employee should suggest that the money be donated to the University of Florida Foundation or another appropriate direct support organization of the University of Florida. The check should be made out to the direct support organization and not to the employee in order that the income not be imputed to the employee.

An employee may accept reasonable expenses for the employee and spouse which are related to the honorarium event. If a lobbyist pays the expenses related to an honorarium event, the lobbyist or committee must provide a statement to the employee no later than 60 days after the event with details of the expenditure. The employee must disclose this information to the Department of State on an annual statement. These honorarium expense reports are due on July 1 of each year for the preceding calendar year.

Reporting forms are available from: Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317-5709. A chart summarizing the requirements concerning gifts and honoraria for "specified state employees" and "procurement employees" follows.

**SUMMARY CHART:
 REQUIREMENTS CONCERNING GIFTS AND HONORARIA
 FOR SPECIFIED STATE EMPLOYEES AND PROCUREMENT EMPLOYEES**

	<u>Solicitation</u>	<u>Accepting</u>	<u>Reporting to Commission on Ethics</u>
GIFTS (does not include gifts to relatives)	May not solicit gift from "lobbyist."*	May not accept gift of more than \$100 value from "lobbyist."	Quarterly report of all gifts in excess of \$100. (Form 9). Annual report of gifts in excess of \$100 received from a governmental entity or direct support organization. (Form 10).
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HONORARIA	May not solicit honorarium from <u>anyone</u> if related to the employee's public duties.	May not accept honorarium from "lobbyist." May accept payment of expenses of employee and spouse for honorarium event.	Annual report of payments of expenses of honoraria events. (Form 10).

*"Lobbyist" throughout this chart includes a lobbyist who lobbies the University of Florida, the partner, firm, employer, or principal of the lobbyist, and a political committee or committee of continuous existence, as defined in Section 106.11, Fla. Stat.