



CITY OF TALLAHASSEE INDEPENDENT ETHICS OFFICE

LEGAL MEMORANDUM

TO: Mr. Carlos A. Rey
Chair

Date: December 14, 2021

FROM: John Laurance Reid, Esquire
Board Counsel

Cc: Mr. Dwight A. Floyd
Independent Ethics Officer

SUBJECT: Campaign sign placement.

At this Board's November meeting, a constituent raised the issue of candidates for city commission utilizing space on private property owned by lobbyists, city vendors, and/or city lessees to display campaign signs. The Board felt that the issue was worthy of additional research and a legal opinion.

QUESTION PRESENTED

Commonly during campaign season, city commission candidates will display their campaign signs on private properties owned by lobbyists, city vendors and/or city lessees in highly traveled and highly visible locations. While not always, the property owners generally grant access to incumbent city commissioners. The property owners generally do not provide access to their property in multiple candidates in a single race.

Does a city commissioner, running for reelection, violate the Tallahassee Ethics Code when she or he displays her or his campaign sign, paid for by campaign funds, on property owned by a lobbyist, city vendor and/or a city lessee?

SOLICITATION OR ACCEPTANCE OF GIFTS

The current Tallahassee Ethics Code prohibits the solicitation or acceptance of gifts in some circumstances. The applicable ordinance 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), TALLAHASSEE CODE OF ORDINANCES. (*emphasis added*.).

The term “covered individual” is defined in ordinance as follows:

Covered individual means:

- (1) Each public official;
- (2) Each employee and each member of a city board, commission, or council who is required by F.S. § 112.3145, to file an annual financial disclosure, including any employee with purchasing authority exceeding \$35,000.00; and
- (3) Each employee who is a procurement employee. "Procurement employee" means any city employee who has 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.

§ 2-4, TALLAHASSEE CODE OF ORDINANCES.

“Public officials” are defined as “members of the city commission and commission-appointed aides, mayor and mayor's appointed assistants and aides, city manager, city attorney, city auditor, city treasurer-clerk, members appointed by the city commission to serve on any advisory, quasi-judicial, or any other board, commission or committee of the city.” *Id.*

A Tallahassee City Commissioner qualifies as a “public official;” however, the question remains as to whether she or he, acting as a candidate for reelection, still meets the definition of “public official.” As the analysis of the term “gift” is dispositive in resolving the general question posed, this specific issue need not be addressed.

The Tallahassee Ethics Code does not define the term “gift” but instead refers to its definition in the state ethics code. *Id.* In addition to its enumerated items defined as gifts, the statutes include exceptions that would not constitute a gift for purposes of the ethics code.

One of the exceptions to the definition of a “gift” is a campaign contribution. The applicable ordinance reads that a “gift” shall not include “contributions or expenditures reported pursuant to chapter 106, contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party or affiliated party committee.” § 112.312(12)(b)2., FLA. STAT. (2021). Chap. 106 is the campaign financing provision of state law.

Pursuant to local ordinance, all candidates for city commission are subject to state election laws. *See* § 7-1, TALLAHASSEE CODE OF ORDINANCES. State law provides limits on campaign contributions, including non-monetary, in-kind contributions. One may argue that the physical location where the campaign sign is displayed is something of value and amounts to an in-kind contribution, subject to state and local limits. This question, however, is one related to the state election code and not the Tallahassee Ethics Code; therefore, the issue lays outside the subject matter jurisdiction of this Board. This matter may only be addressed by the Florida Elections Commission and/or Florida Division of Elections.

CONCLUSION

A Tallahassee City Commissioner, running for reelection, does not violate the prohibition on the solicitation or acceptance of gifts under the Tallahassee Ethics Code when she or he allows her or his campaign signs to be displayed on the property of a lobbyist, city vendor, and/or city lessee.

Furthermore, the property owner has a First Amendment right to express her or his preference in an election, and any attempt by a government actor to mandate equal time, such as to grant open access to all candidates' campaign signs, would be unconstitutional as it would mandate a private property owner express support for candidates she or he does not.