



BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Honorable Michael J. Ryan, Mayor,
and Members, Sunrise City Commission

From: John W. Scott, Inspector General

Date: March 2, 2017

Subject: **OIG Closing Memorandum Re: *City of Sunrise BB&T Center Suite Tickets, Ref. OIG 15-003***

The purpose of this memorandum is to report that the Broward Office of the Inspector General (OIG) has concluded its investigation into City of Sunrise officials and employees' use of the city's executive suite at the BB&T Center sports and entertainment arena (the Center).

The OIG predicated its investigation in early 2015 upon a tip alleging that Sunrise officials and employees may have improperly benefited from the use of the city's suite at the Center, which is located within the city. Upon our initial review of city documents and state gift reports, the OIG determined that some officials were possibly accepting tickets, food, and beverage that exceeded \$50 in value in violation of the Broward Code of Ethics for Elected Officials (Broward Ethics Code). In addition, we determined that some of that use may have exceeded \$100 in value and not disclosed as required by the State Code of Ethics for Public Officials and Employees (State Ethics Code).

Although issues with the acceptance, valuation, and reporting of the use of the city's suite had been raised with state authorities as early as two years after the Center's opening, significantly, until the OIG investigation, the city did not have a formalized policy¹ on how to document the ticket transactions, calculate the value of the suite's use, or communicate the value and reporting requirements to those officials and employees who were legally required to report gifts valued over \$100 to the Florida Commission on Ethics.

The city's current suite use policy and method of valuation, revised during the course of and because of the investigation, as well as amended county law, now allow Sunrise officials and

¹ In a letter in 2000, the then-city attorney referenced a "specific policy" on use of the suite; however, he was referring to Resolution 98-10-98-A, which gave the city manager or his designee the authority to use the suite for any of several enumerated public purposes and approved city funding for food, refreshments, and "other expenses" at those events.

employees to substantially comply with the gift acceptance and reporting requirements of the state and county's ethics codes. Last month, applying the city's new, reasonable valuation method to past events under investigation, city officials reported to the Florida Commission on Ethics those gifts that exceeded \$100 in value. The county's \$50 gift acceptance limitation no longer applies to gifts given to an elected official from his or her own governmental entity. Thus, the OIG is closing this matter without further action.²

Relevant Authority

City of Sunrise Resolution 96-68 approved a letter of agreement between the city, the county, and the Center's management company regarding the arena on April 14, 1996. That agreement did not reference the city's use of a suite.³ Resolution 98-10, dated January 13, 1998, was the vehicle by which the city commission formally accepted the use of an executive suite and other "donations"⁴ from the management company and authorized the city to execute an executive suite licensing agreement. The license agreement was between the city and the management company for use of the suite for 30 years. Ordinance 715-X-98-C permitted enumerated officials, managers, and supervisors and their family members to use the suite subject to city manager selection criteria. Resolution 98-10-98-A, passed on September 22, 1998, gave the city manager or his designee the authority to use the suite for any of several enumerated public purposes⁵ and approved city funding for food, refreshments, and "other expenses" for such events.

The Broward Ethics Code applies to municipal elected officials, effective January 2, 2012. Broward County Code (BCC) § 1-19(b)(3); 1-19(b)(9); 1-19(c). It permits an elected official within the county to accept, in his or her official capacity, a gift valued at up to \$50, if the donor

² The OIG has not issued a report in this matter because it has not determined, pursuant to Section 12.01(D)(1)(b) of the Charter of Broward County, that a report will assist the county or any municipality in preventing similar future misconduct.

³ The city agreed to pay \$4 million for easement rights to a potable water wellfield on the site, to give 4.17 acres of land to "square off" the site's boundaries, to purchase at its expense 12.24 acres for a "passive park," to assist the management company in obtaining a grant, to waive up to \$1 million in development fees, to change zoning for approximately 50 acres of the project site from industrial use to commercial/retail use classification, to pay up to \$25,000 for a site area traffic impact study, to pay for costs up to \$1 million associated with traffic improvements to reduce time to clear the arena if more than 30 minutes, to expedite inspections and permitting, to provide police for traffic management and security, to provide police escort for teams and artists upon request, to waive fireworks permit fees and provide fire inspectors for set ups and displays, to provide a free three-person paramedic unit for hockey games, to transport injured hockey players and other management personnel in emergencies, to provide a hazardous materials response unit for cleanup as necessary, to train event staff on CPR/first aid at least twice a year, to assist permitting for a helipad, to provide maintenance of all public streets within the site, to provide use of certain heavy equipment with notice, to provide solid waste services at the city's cost, and to pay a \$50,000 "grant-in-aid" to the Greater Fort Lauderdale Convention & Visitors Bureau to promote the arena as a tourist destination. In exchange, the management company and the county agreed to purchase a 145.4-acre parcel for arena site development, and the management company agreed not to relocate and to play all home hockey games at the Center.

⁴ The donations were ad space in all hockey game programs, mention of the city at the beginning of all home hockey games, and all references to game location being in the city.

⁵ The enumerated public purposes were "economic development; city promotions/marketing; employee recognition/awards; resident recognition/awards; disadvantaged children; charitable and civic organizations; Sunrise schools, governmental and labor relations; leisure services programs; employee benefits; recruitment; city events; and youth groups/organizations."

is not a lobbyist, vendor (actual or potential supplier), or contractor to the official's governmental entity. BCC § 1-19(c)(1)b. During the pendency of this investigation, the Broward County Commission passed several new exceptions to that gift rule. As a result, it is now proper under the *county* ethics law for an elected official to accept a gift from his or her own governmental entity, regardless of the gift's value. BCC § 1-19(c)(1)b.

The *state* gift rules apply to public officials and employees who are required by state law to file financial statements, including municipal officials and employees required to file a Florida Commission on Ethics CE Form 1 annually (Form 1 Filers). F.S. § 112.3148(1); 112.3148(2)(d). In addition to this and other reporting obligations, Form 1 Filers are required to file reports with the Florida Commission on Ethics, listing all permitted gifts valued at over \$100 that they accept from non-relatives, including from the local governments they serve. These reports (CE Forms 9, or Quarterly Gift Disclosures) are to be filed by the end of the calendar quarter following the calendar quarter of receipt of a reportable gift. F.S. § 112.3148(8).

The State Ethics Code's definition of "gift" includes food, beverage, and event tickets. F.S. § 112.312(12)(a). However, "[w]here the donee is being reimbursed or provided by his public agency for travel or expenses incurred in the performance of public duties, the donee has not received a gift when a public purpose for the expense exists. Salary, benefits, services, or other expenses received by a public officer or employee from his or her public agency do not constitute gifts." Florida Administrative Code (FAC) Rule 34-13.210(1)(b) (implementing F.S. § 112.312(12)(b)1.).

Thus, in 2000 when state ethics complaints were filed against three Sunrise commissioners alleging they had failed to report the acceptance of arena suite tickets from the city, the Florida Commission on Ethics found the circumstances to be insufficient to proceed to investigation. The Commission stated that "the use of the suite was limited to one City Commissioner at a time when he or she was requested to attend an event by the City Manager for the purposes of conducting City business in furtherance of the intended purpose of the suite, that is, for government or labor relations and economic development. Thus, it appears that Respondent's single use of the suite may have been the quid pro quo for his conducting City business, rather than a gift to him from the City."

But "[t]he use of the term 'benefits' in Rule 34-13.210 ... was not intended to include such perquisites as a large number of tickets to theater performances." Florida Commission on Ethics Opinion (CEO) 92-33 (July 17, 1992). No public purpose is shown "[w]here the gift involves attendance at a spectator event and is given by a governmental entity, and where the donee has no direct supervisory or regulatory authority over the event, persons participating in the event, or the governmental entity which gave the tickets to the donee...." FAC Rule 34-1.320(2)(b).

And, critically, where there is no public purpose for the expense, such as an arena suite ticket provided for the guest of a hosting official or employee who is required to file a Form 1, the item is a gift to the official or employee. CEO 05-5 (April 26, 2005), at n. 10. Travel expenses for a companion of a city official constitute a reportable gift to the official when the companion accompanies the official on a city-sponsored trip. CEO 06-27 (December 6, 2006).

The valuation, under state law, of a gift is essential in most cases to knowing whether a gift may be accepted and, if so, whether it must be reported.

The valuation of a skybox event ticket is controlled by F.S. § 112.3148(7)(h) and detailed in FAC Rule 34-13.500(5). It is the face value of the ticket or the per-event value, whichever is greater, plus the actual cost to the donor. Where the cost to the donor (in this matter, the city⁶) is zero, and there is no face value on the ticket, the value is the cost of admission to persons with similar tickets. CEO 95-36 (December 1, 1995).

The value of food and beverage provided to multiple participants at an event can be calculated on a pro rata basis. If provided to an event for more than 10 people, the value is the total value of items provided (actual cost to the donor less taxes and gratuities), divided by the number of persons invited. F.S. § 112.3148(7)(j).

The general rule for valuation of a gift (that is, unless a specific valuation method is otherwise enumerated) is the actual cost to the donor, less any taxes or gratuity. F.S. § 112.3148(7)(a). There is no valuation method specified for parking. See F.S. § 112.3148(7). Parking included in the use of a city suite at a baseball stadium was held not to be a gift when it was for officials who were performing a hosting function. CEO 01-19 (October 23, 2001).

The OIG Investigation

The OIG requested and reviewed copies of relevant documents from the city, the management company, and the Florida Commission on Ethics. OIG Special Agents interviewed several current and former city officials, city staff, and management company employees during the course of the investigation. From these sources, the OIG learned the following:

The Center, owned by Broward County, is located in the city of Sunrise on county-owned land. When it opened in 1998 as the National Car Rental Center, the owner of the management company that operates the arena and owns the hockey team that plays there gave the city the use of a private, 14-person suite for 30 years.

The city circulated a benefits policy, citing Ordinance 715-X-98-C and Resolution 98-10-98-A as its authority, signed by the then-city manager on November 24, 1999. That policy reflected that the suite tickets were considered an employment benefit for management and supervisory employees and their family and that certain uses required city representatives to act as hosts. Host duties were specified. The ticket and other expenses for the designated host were considered expenses associated with the individual's service or employment, and the host was permitted to give a second ticket to a family member. That policy did not include any guidelines for gift valuation, acceptance, or reporting.

By the time the OIG began its inquiry, the former city manager had delegated to the director of leisure services the duty of managing suite tickets. Although the city manager or director of economic development might direct her otherwise, generally, she distributed tickets at her

⁶ Because the management company (that lobbies the city) did not control or even suggest to whom any suite tickets should be given, we determined that it was not the indirect donor of the tickets. See FAC Rule 34-13.310(8)(c).

discretion to officials, employees, residents, and others for admission to the Center and suite for such events as Panthers hockey games and concerts by Lady Gaga, Billy Joel, Paul Simon, Sting, and Justin Timberlake. The top priority for suite tickets was given equally to city commissioners and economic development. Then they were provided to community groups, citizens, or city employees.

One city employee or official per event was assigned to act as a host and supervise and monitor guests' activities. The former city manager said in an interview that he understood the first ticket to any official was not considered a gift but that he repeatedly told elected officials that they were required to report the additional tickets as gifts. The city manager and director of economic development decided at which events the city would provide food and beverage. City suite use logs recorded the name and date of the event, the names of the host and co-host, the names of recipients, and a general description of the use of the event. During the initial review period, the OIG observed that each recipient took at least two tickets.

Although there were "rules and regulations" for suite guest conduct, there was no policy or protocol for the distribution or use of the tickets, no documentation of the public purpose or valuation associated with them, and no communications to Form 1 Filers about their responsibility to report tickets, food, and beverage valued over \$100.

The OIG reviewed correspondence between 2000 and 2014 that reflected the city attorneys' understanding that Center suite use—beyond those officials or employees who served as hosts—posed a gift reporting concern. That correspondence included:

- Two letters dated in February 2000, from the then-city attorney to an assistant state attorney explaining, among other things, how the suite came to be given to the city, that it was the city manager who decided who received the tickets, and how the suite was used by only one commissioner at any given time.
- In the weeks prior to the Center's ten-year anniversary celebration, the then-city attorney sought an informal advisory opinion from the Florida Commission on Ethics on whether city officials could accept tickets to a Celine Dion concert and attendant parking, food and beverage. Citing to specific Florida Commission on Ethics Opinions, a Commission attorney replied in December 2008 that if the city was paying for the tickets, the city was the donor of the tickets (not the management company, that lobbies the city). She also cited to CEOs and concluded (1) that tickets given to officials by their own agency are not considered gifts, because when they act in their official capacities, they are providing equal or greater consideration and (2) that an official's second ticket and attendant items would be a reportable gift, if their value exceeded \$100.
- An email from another former city attorney to the mayor dated October 2010, responding to the mayor's request to advise whether he could accept and needed to report an "executive parking lot" pass and "Bank Atlantic Center VIP" pin.⁷ The attorney replied that, because

⁷ The Center was previously known as the Bank Atlantic Center.

the items permitted the official access to the venue where he was serving in a hosting capacity, they were not gifts and thus not subject to reporting.

- In early 2013, in response to the then-city manager's request for general guidance on use of the suite, the city attorney wrote an email summarizing the suite's origin and cited to CEOs that concluded that, when a city gave tickets to its officials acting as official hosts or representatives pursuant to its written policy, the tickets were not considered gifts but that tickets to "spouses/companions of Commissioners" were reportable gifts if valued over \$100.^{8,9}
- An email from the then-city manager to the city attorney dated February 2013, where he wrote that, "It appears based on CEO 05-5 that they would need to declare the ticket as a gift if the value exceeded \$100." The word "yes" was typed next to this question, possibly added by the city attorney when replying on February 4, 2013.
- Later that month, the city attorney advised the city manager that the city could accept four "lower bowl" concert tickets from the management company and give them to employees, so long as the gift was reported if valued over \$100 and the employees were Form 1 Filers.
- On September 5, 2014, the city attorney wrote an email to the city manager, advising on the city's giving Davis Cup¹⁰ tickets to elected officials and spouses. The city attorney concluded that the officials would not receive reportable gifts but that tickets to spouses in excess of \$100 in value would be reportable gifts.
- In December 2014, the city attorney advised an elected official to report the four tickets he was contemplating using for his family members at the Jingle Ball concert at the Center. (Florida Commission on Ethics records show that the official did report these as gifts valued at over \$100.)

The OIG concluded that (1) despite the city attorneys' understanding of the ethical consequences from the distribution of Center suite tickets to elected officials, there was little comprehension among staff and officials concerning those consequences to officials or employees who were Form 1 Filers, (2) guidance about reporting was done on an *ad hoc* basis, and (3) little to no guidance was provided on whether or how to calculate and communicate the value of the gifts. The city manager told OIG Special Agents that he had only a general idea about gift reporting until the OIG investigation began. He said that the OIG's involvement caused him to take a closer look at the program, with the assistance of the city attorney, the director of leisure services, and the former director of leisure services. This group decided that a formal policy for gift reporting was required to minimize criticism and to assist employees and officials to avoid inadvertently breaking the law.

⁸ This email was forwarded to the current city manager on December 17, 2014.

⁹ The former city manager told the OIG that he did not pass the city attorney's advice on to the elected officials, that he believed that the elected officials were receiving this guidance during their required ethics training, and that he was surprised to learn during our interview that the gift acceptance and reporting rules applied to some of the employees.

¹⁰ The Davis Cup is an international, team tennis tournament.

The city did commence an effort to craft a comprehensive suite use acceptance, valuation and reporting protocol. On May 18, 2015, the city emailed over 50 city officials and staff members regarding the State Ethics Code requirements that they make financial disclosures and quarterly gift disclosures for gifts exceeding \$100 in value. According to the former director of leisure services, who was responsible for distributing the tickets, this was the first time in 15 years that she received any direction on reporting gifts.

On November 5, 2015, the city's human resources director sent an email to all city officials and staff, communicating a suite use and host policy signed by the city manager and city attorney on October 9, 2015. The policy restated the public purposes in Resolution No. 98-10-98-A and the intended ticket recipients (management and supervisory personnel and their family members) described in Ordinance No. 715-X-98-C. It explained the need for a host to supervise the suite's occupants and the host's duties before, during, and after an event. It detailed how officials and hosts might attend as city representatives. The policy specified that costs associated with the host or representative's use of the suite (tickets, parking passes, food, and beverage) were an expense associated primarily with the recipient's service or employment and were not considered a gift—but that a companion's use of the suite is a gift of the ticket and any food or beverage provided. Employees and officials not hosting or serving as a city representative receive a gift for their seat as well as their guests'. The policy further described state gift reporting requirements and stated that each ticket recipient would receive a statement declaring the gift attributed to them, the monetary value, the date of the gift, and whether the official or employee was acting as a host or city representative or if there was another public purpose for attending.

The policy requires the documentation of the value of each event's tickets, food, and beverage, including correspondence, order forms, and receipts. It also mandates the information to be captured on the suite use logs: event name/description, event date and time, description of type of suite use, name of suite host(s) and whether they received a guest ticket, name and department of each city personnel provided tickets and whether they were acting in their official capacity and received a guest ticket, the name of each non-city government official receiving tickets and how many, and the itemized value of the ticket, food, beverage, and any other suite-related gift.¹¹

Under the facts reported here, the OIG found it difficult to value the use of the suite under state law. There was no price on the face of the tickets and no calculable cost to the donor-city on which to base the valuation. Because of the manner in which suites were sold, the fallback statutory valuation method of cost to persons with similar tickets could not be used. This office considered several alternative methods for valuation but ultimately could not quarrel with the city's new approach of requesting the management company to provide, for each of the Center's fiscal years, the annual value of the suite and the total number of events and then dividing by 14. And because the city maintains beverages in a locked cabinet between events at which refreshments are served but only serves beverages occasionally, this office could not conceive of an accurate method to capture the amount of the different beverages consumed at the events when beverages were served. Thus, the city's approach to use a rolling look-back to total all beverage costs twelve months prior to each event, divided by the number of events at which

¹¹ By March 17, 2016, the city's suite use logs were amended to include: (1) whether ticket recipients were Form 1 Filers, and (2) whether "Memo Sent," which we presumed referred to the valuation memorandum.

beverages were served, and then divided by the total number of attendees during that roll-back period, was also fair. The OIG was unable to value, under state law, the four parking passes that were also issued with the event tickets: like the event tickets, they did not have an actual cost or a face value. The city treated them as folded into the annual value of the suite and considered them as part of the per-event value.¹²

One month after the new policy accurately communicated state gift acceptance and reporting requirements, the city arranged for a Florida Commission on Ethics attorney to come and give a presentation on state gift laws to the city's Form 1 Filers (71 persons attended).

In its review of documentation following the implementation of the new policy, the OIG observed that a memo was apparently issued to each Form 1 Filer after the events, specifying the city's valuation of the tickets, food, and beverage and informing the recipients to file a gift report if the value exceeded \$100. According to city and Florida Commission on Ethics records generated since the policy implementation, Form 1 Filers who received suite use valued at over \$100 did report their gifts.

Finally, there were four officials who attended events in 2014 and received companion tickets that the OIG concluded were valued at over \$100 under the city's new valuation methods. On February 3, 2017, these officials filed a total of five Quarterly Gift Disclosures for those 2014 gifts. Accompanying each was a letter that stated in part, "The City of Sunrise ('City') has conducted a comprehensive review of its gift giving and gift reporting policies involving use of the City's suite at the BB&T Center from 2014 forward. As a result, City policies have been reviewed and revised. In addition, valuations attributed to past uses of the City's suite have been reviewed and, in some cases, revised by the City. This process has led to the filing of this [CE] Form 9 [Quarterly Gift Disclosure] and this explanation."

Conclusion

Because the value of the tickets exceeded \$50 by any reasonable measure, the Broward Ethics Code prohibited elected officials from accepting any tickets additional to the ones for themselves. However, a new exception for gifts from one's own governmental entity was passed in December 2015, and this office declines to enforce past conduct that the Broward County Commission has since decided is acceptable.

The city's new policy, written and put into effect as a result of the OIG investigation, appears to fairly capture the details necessary to reasonably value the use of the suite for Form 1 Filers. As implemented over the past year, the new protocol properly communicates the need for certain identified employees and officials to report these gifts and gives them the information they need to do so. Form 1 Filers are now apparently submitting Quarterly Gift Disclosures as necessary. And, several officials have now filed Quarterly Gift Disclosures for tickets they accepted within the review period and which the OIG questioned as reportable.

¹² The OIG also considered that it was likely the parking passes were most often given (1) to officials and employees serving as hosts and (2) to individuals who were non-Form 1 Filers and thus not gifts that needed to be valued or reported.

Thus, the OIG is satisfied that there is now substantial compliance with the county and state ethics codes and is closing this matter without further action.

cc: Richard Salamon, City Manager