

Memo

To: Mark Brown, Vice Mayor, Town of Lauderdale-By-The-Sea

From: Susan L. Trevarthen, Town Attorney
Robert A. Meyers, Assistant Town Attorney

Cc: Bud Bentley, Town Manager

Date: April 18, 2016

Re: Ability of Elected Official to Accept a Gift
Town Attorney Opinion (TAO) 16-2 (Gifts)

Facts: The Atlantic Institute, in conjunction with the Turkic American Federation of Southeast, is hosting two trips in the summer of 2016, and has invited you to participate in one of its two excursions. According to the invitation, other South Florida elected officials and community leaders have also been invited to take part in these trips.

The Atlantic Institute, which established branches in the southeastern United States in 2012 as a derivative of the Istanbul Center, is a nonprofit organization with a goal to facilitate dialogue and bridge cultures around the world. It fulfills its mission in part by arranging intercultural trips in an effort to create cross-cultural understanding through person-to-person connections. The Atlantic Institute has organizing similar travel programs in previous years to those described in your invitation. The 2016 participation fee for each trip (representing your cost) highlighted in the invitation is \$2,500 per person or \$4,500 per couple. The Atlantic Institute indicates it will cover the following expenses: food, lodging, entrance fees, ground transportation and the flight between Thailand and Cambodia for those selecting the July 22nd trip.

Question: You wish to know whether you would be in compliance with the Broward County ethics ordinance and state law should you participate in one of these trips and accept the gift from the Atlantic Institute to cover the expenses detailed in the invitation.

Analysis:

1. Broward County Code of Ethics

Section 1-19(c)(1)(a) contain certain restrictions on the acceptance of gifts. A municipal elected official and his or her relatives are prohibited from accepting gifts in excess of \$5.00 from any registered lobbyists or from vendors, contractors, suppliers or potential suppliers of such government entity. The Atlantic Institute is not currently a vendor or contractor with the Town of Lauderdale-By-The-Sea and is not registered as a lobbyist with the Town. Consequently, you are not precluded from accepting a gift valued at more than \$5.00 from the Atlantic Institute.

Section 1-19(c)(1)(b) states that elected officials may accept gifts from other sources given to them in their official capacity up to a maximum of \$50 per occurrence. The \$50 limitation is not applicable to gifts given to elected official in their personal (nonofficial) capacity. Furthermore, under the revised local ethics ordinance, there are four additional exceptions to the \$50 limitation, but none appear to be applicable to this particular gift.

Since the invitation is addressed to you as “Commissioner Brown” and you indicate in your request for opinion that you are being invited in your official capacity, we conclude that you are bound by the \$50 gift cap set forth in the Broward Ethics Ordinance. You have not provided us with the actual costs that the Atlantic Institute has agreed to assume for each traveler, but the value is obviously substantial. Although the local ethics ordinance does not preclude you from accepting the gift and traveling on one of the Atlantic Institute excursions, you would be required to reimburse the donor the difference between the cost of these items and the \$50 ceiling existing under the local ethics ordinance.

2. State Gift Law

Under state gift law, there are four component of the law to examine: 1) the extent to which the gift influences one’s actions as a public official with respect to the donor; 2) whether the gift is covered by one of the exclusions set forth in state law and is therefore not considered a gift; 3) whether the person accepting the gift meets the definition of a Reporting Individual and 4) whether the value of the gift is capped because it is offered by a lobbyist, principal of a lobbyist or a vendor or contractor

Based on the facts that you have provided us, the Atlantic Institute transacts no business in Lauderdale-By-The Sea. Consequently, it would be difficult to imagine a scenario in which accepting the abovementioned gift would influence you to take action in your official capacity to benefit the donor. Thus, the offer to cover the abovementioned travel or travel-related expenses is not a prohibited gift under state law. Moreover, since the Atlantic Institute is not a Town lobbyist, contractor or vendor, state law permits you to accept a gift from this source in excess of \$100. As an elected municipal official, you are a Reporting Individual under state law, which means if the gift from the Atlantic Institute is worth more than \$100, you would be obligated to

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report it, unless the Atlantic Institute's gift is excluded from the definition of a gift. Under the circumstances, the expenses the Atlantic Institute offers to cover associated with this travel constitute a gift to you.

Answer: Pursuant to state and local ethics laws, you are not precluded from accepting a gift from the Atlantic Institute in connection with these travel programs. However, due to the fact the gift is being offered to you in your official capacity, you cannot accept a gift worth more than \$50 from the Atlantic Institute. If you accept the gift and reimburse the donor in accordance with the local ethics ordinance, you would not be compelled to report the gift because its value would be \$50, which is less than the state's \$100 gift reporting threshold.

Assuming that you have disclosed all pertinent facts to us, you may use this opinion as a "safe harbor" under the Broward County Ethics Ordinance should any questions arise concerning the Opinion provided herein.

Limitations: This Opinion is provided pursuant to Subsection 8 of the County Ethics Code, which allows an Elected Official to request an advisory opinion about how the Code applies to his or her own situation. "Requests for opinions shall be considered only if in writing and signed by the Elected Official or by his or her office staff. Requests for opinions shall state all material facts necessary for the advising attorney to understand the circumstances and render a complete and correct opinion." In addition, "until amended or revoked, an advisory opinion rendered pursuant to this section shall be binding on the conduct of the Elected Official covered by the opinion unless material facts were omitted or misstated in the request for advisory opinion. If the Elected Official acts in accordance with a binding advisory opinion, the Elected Official's conduct may not be found to be in violation of the Broward County Elected Official Code of Ethics. However, any opinion rendered under this section shall not be binding as to whether the Elected Official's action complies with state or federal ethics requirements."