

LAW OFFICES
HALL & ROSENBERG, P.L.

W. EARL HALL, P.A.
ANGEL PETTI ROSENBERG, P.A.

TELEPHONE (954) 572-9020
FACSIMILE (954) 572-9030

8850 WEST OAKLAND PARK BOULEVARD
SUITE 101
SUNRISE, FLORIDA 33351
www.hallrosenberg.com

March 1, 2016

Commissioner Kenneth Thurston
5581 W. Oakland Park Boulevard
Lauderhill, FL 33313

Re: Complimentary Tickets for Public Officials

Dear Commissioner Thurston:

I have been asked to research and advise whether public officials are entitled to receive complimentary tickets to attend events at the Lauderhill Performing Arts Center (LPAC). Based on my research, it is my opinion that public officials are prohibited from receiving complimentary tickets to attend events at the LPAC if the value exceeds \$5.00. If a ticket is received and the value is less than five dollars, it is considered to a gift that must be reported and disclosed as required by state law.

During my research, I reviewed Florida Commission on Ethics Opinion CEO 92-33. In that opinion, the City of Miami Beach owns and operates a performing arts theater. The city had contracts with a management company that required the city to receive 26 tickets per performance at the theater. In CEO 92-33, the Commission opined that "City commissioners have received a gift, not a benefit of office, when the city gives them a block of tickets to performances at a municipally-owned theater, which tickets the city receives as a condition of its lease agreement with the producers." A copy of CEO 92-33 is attached hereto as Exhibit A.

Similar to the City of Miami Beach, the City of Lauderhill contracts with a management company, Professional Facilities Management (PFM), to manage and operate the performing arts center. Also similar the City of Miami Beach, the agreement with PFM provides for an allocation of not more than 20 complimentary tickets to the City of Lauderhill, if not limited by the promoter. The relevant page from the agreement with PFM is attached hereto as Exhibit B.

As part of my review of this question, I also reviewed the Broward County Ethics Code (Ethics Code). The Ethics Code contains a provision that prohibits elected officials from receiving gifts from vendors or contractors with a value in excess of \$5.00. A copy of the relevant page from the Ethics Code is attached hereto as Exhibit C.

Based on my research and review, it is my opinion that Lauderhill City Commissioners may not accept complimentary tickets to events at the LPAC that have a face value in excess of \$5.00. If a ticket is received and the value is less than five dollars, said ticket is a gift that must be reported and disclosed as required by state law.

Do not hesitate to contact me if you wish to discuss this matter.

Sincerely,

A handwritten signature in black ink that reads "W. Earl Hall". The signature is written in a cursive style with a large, stylized "W" and "H".

W. Earl Hall, Esq.

Cc Charles Faranda, City Manager
Andrea Anderson, City Clerk

CEO 92-33 -- July 17, 1992

"A"

GIFT ACCEPTANCE/DISCLOSURE

CITY COMMISSIONERS RECEIVING TICKETS TO EVENTS AT CITY-OWNED AUDITORIUM

To: *(Name withheld at the person's request.)*

SUMMARY:

City commissioners have received a gift, not a benefit of office, when the city gives them a block of tickets to performances at a municipally-owned theater, which tickets the city receives as a condition of its lease agreement with the producers. However, there is no indication that the tickets are indirect gifts from a lobbyist or from a partner, firm, employer, or principal of a lobbyist who lobbies the city commission, and there is no indication that the city contract manager is a lobbyist who lobbies the city commission for purposes of Section 112.3148, Florida Statutes. Thus, the members of the city commission may accept the sets of tickets, but where the combined face value of a set of tickets exceeds \$100, the commissioners must disclose them quarterly on CE Form 9. CEO 92-12 is referenced.

QUESTION:

Where a city, by contract, receives tickets to events at the city-owned theater, and where the tickets are divided among the members of the city commission for either their personal use or to distribute to others at their discretion, have the members of the city commission received gifts which are subject to the gift acceptance and disclosure provisions of Section 112.3148, Florida Statutes?

Your question is answered in the affirmative.

In your initial letter of inquiry and through subsequent correspondence and discussions with our staff, we are advised that the City of Miami Beach owns and operates a performing arts theater where Broadway shows, ballets, and concerts are offered to the public. You advise that the City has entered into two different contracts involving performances at the theater. For non-Broadway shows, the City has a contract with a management company which specifies that the City will be provided 26 tickets per performance for every event staged at the theater. For Broadway shows, the City contracts directly with a producer, and that contract requires the producer to give the City 20 tickets for the opening night performance and 10 tickets for each performance during the remainder of the show's run. Thus, for a typical Broadway show, the producer gives the City a total of 170 tickets, and each Commissioner receives 20 tickets.

The distribution of tickets is effected in the following manner. Prior to any show or event, the City Contract Administrator places each Commissioner's allotment of tickets in an envelope, and the envelopes are distributed to the Commissioners by personnel in the Mayor's Office. Commissioners are then free to use or distribute the tickets to others at their discretion. You question the applicability of the gift provisions contained in Section 112.3148, Florida Statutes, as well as the Commission's rules promulgated in Chapter 34-13, Florida Administrative Code, to this situation.

Section 112.312(12), Florida Statutes, contains the following definition of the term "gift":

'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.

'Gift' does not include:

1. Salary, benefits, services, fees, commissions, or expenses associated with the recipient's employment.

We are of the view that the tickets provided to the City as a condition of the contracts the City enters into with its management company and producers would not be considered "gifts" to the City, as it appears that they are a part of the consideration the City receives for leasing its auditorium. Even if we did consider the tickets to be gifts to the City, Section 112.3148, Florida Statutes, does not prohibit the giving of gifts to governmental entities. See CEO 92-12.

With regard to the complimentary tickets that the City receives and then distributes to its Commissioners, Rule 34-13.210(2), Florida Administrative Code, provides:

Where 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, fees, or other expenses received by a public officer or employee from his or her public agency do not constitute gifts.

It is our view that these tickets would not be considered "benefits" associated with the City Commissioners' public office. Twenty tickets to a Broadway show was not the type of benefit we had in mind when we promulgated this rule. The use of the term "benefits" in Rule 34-13.210 was intended to convey those benefits typically associated with one's employment, such as health insurance, sick leave, or paid parking. It was not intended to include such perquisites as a large number of tickets to theater performances. Thus, we are of the view that these tickets are not a benefit of office that would preclude them from being considered a gift.

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

(2)(b) 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 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 agency. With respect to an agency that has established, by rule, ordinance, or law, a registration or other designation process for persons seeking to influence decisionmaking or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, the term "lobbyist" includes only a person who is required to be registered or otherwise designated as a

lobbyist in accordance with such rule, ordinance, or law or who was during the preceding 12 months required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law.

(4) A reporting individual or procurement employee or any other person on his behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from 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 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.

(5) A political committee or a committee of continuous existence, as defined in s. 106.011; a lobbyist who lobbies a reporting individual's or procurement employee's agency; the partner, firm, employer, or principal of a lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from giving, either directly or indirectly, a gift that has a value in excess of \$100 to the reporting individual or procurement employee or any other person on his behalf; however, such person may give a gift having a value in excess of \$100 to a reporting individual or procurement employee if the gift is intended to be transferred to a governmental entity or a charitable organization.

(6)(a) Notwithstanding the provisions of subsection (5), an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, or a school board may give, either directly or indirectly, a gift having a value in excess of \$100 to any reporting individual or procurement employee if a public purpose can be shown for the gift;

(b) Notwithstanding the provisions of subsection (4), a reporting individual or procurement employee may accept a gift having a value in excess of \$100 from an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, or a school board if a public purpose can be shown for the gift;

Subsection 112.3148(4) would prohibit a City Commissioner from accepting a gift with a value in excess of \$100 from a lobbyist who lobbies the City, or from the partner, firm, employer, or principal of a lobbyist. While we recognize that public employees can and do attempt to influence the official actions of the officers of their public agency, we do not believe that the definition of "lobbyist" was intended to encompass such persons or that their duties with respect to their own agencies constitute "lobbying." Nor is there any indication that the City Contract Manager in this instance is acting on behalf of a partner, firm, employer, or principal of a lobbyist who lobbies the City. Accordingly, it is our view that Section 112.3148(4), Florida Statutes, is inapplicable to this scenario.

Subsection 112.3148(5) prohibits a lobbyist who lobbies the City of Miami Beach, or the partner, firm, employer, or principal of a lobbyist, from directly or indirectly giving a gift with a value in excess

of \$100 to members of the City Commission. For the reasons stated in the foregoing paragraph, we do not consider the City Contract Manager as a lobbyist who lobbies the City Commission, or as the partner, firm, employer, or principal of a lobbyist. Thus, Subsection 112.3148(5), is also inapplicable to our analysis.

With regard to Subsection 112.3148(6), Florida Statutes, we construe this provision as an exception to the prohibitions contained in Subsections 112.3148(4) and 112.3148(5), Florida Statutes, for governmental entities who are engaged in lobbying activities. For example, were the City to employ a lobbyist to lobby the Legislature for additional funding for the arts and where the City gave each member of the Legislature theater tickets worth more than \$100, then Section 112.3148(6), Florida Statutes, would be applicable and a public purpose would have to exist both for the City to be able to give the tickets to the members of the Legislature, and for the legislators to be able to accept the tickets. We do not view the situation before us to be one of this type, and we therefore find Section 112.3148(6) to be inapplicable.

As neither Subsections 112.3148(4), (5), nor (6) appear to prohibit the members of the City Commission from accepting the tickets the City receives pursuant to its various contracts, we are of the view that the City Commissioners may accept the tickets but must disclose them in accordance with Subsection 112.3148(8), Florida Statutes. Thus, where the face value of each set of tickets a Commissioner receives exceeds \$100, the Commissioner must disclose the sets of tickets quarterly on CE Form 9, which we have promulgated specifically for this purpose.

Your inquiry is answered accordingly.

program; provisions for handicapped patrons; parking; security and safety services.

- (D) PFM shall be responsible for the operation and maintenance of the Center except, as otherwise provided in this Agreement in relation to capital improvements, the Structure, the Exterior and individual repairs subject to the approved budget (exhibit F).
- (E) PFM shall be responsible for handling all financial affairs in connection with the Center (except as otherwise provided in the Agreement), on behalf of the City, including, but not limited to, all services related to the management, use and operation of the Center; taxes (other than taxes on revenue or property of the CITY) and licenses; costs of all Events (subject to PFM's right to be reimbursed by the CITY expressly described in this Agreement); refunds necessitated by canceled or postponed Events; any expenses normally paid or generated by Events, if and to the extent the same are not paid or generated by the Event because of the type of rental arrangement utilized; professional services involving center operations; and all budgeting, accounting and reporting systems required by this Agreement and the generation of all required financial reports detailing revenues and expenses. PFM shall be solely responsible for duties and obligations for at least seven (7) Grand Opening events.
- (F) PFM shall establish a policy for the distribution for "trade out tickets" and complimentary tickets, including a system for fully accounting for all such tickets. Ultimate usage of complimentary and "trade out tickets" is subject to PFM's sole determination. However, the CITY may require complimentary tickets for events in a quantity of no more than twenty (20), unless the promoter has contractual limitations that prohibit issuing complimentary tickets or only permits a limited number of tickets.
- (G) PFM shall have sole responsibility for, and the sole right to control and supervision of, its personnel and PFM's Subcontractors, as well as for all of the means, methods, details and other aspects of the management, use and operation of the Center.
- (II) Accounting.
 - (1) PFM shall maintain separate accounting and bookkeeping records for facility income and facility expenses, and shall utilize generally accepted accounting principles and practices in connection with the maintenance of all such accounting records. PFM shall utilize the accrual method of accounting in connection with the Center, based on a fiscal year, which runs from October 1 through September 30.
 - (2) PFM shall permit the City's Representative, upon receipt of ten (10) working days written notice, access to audit, inspect, examine and copy (at

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1 Code of Ordinances, sec. 26-67 et seq., the following Standards of Conduct shall apply
2 to each Elected Official.

3 (1) Acceptance of Gifts.

4 a. ~~No Elected Officials, their spouses or relative,~~ registered domestic
5 ~~partners, their other relatives, and their County or municipal or~~
6 governmental office staff of any Elected Official, shall ~~not~~ accept any gifts,
7 ~~directly or indirectly, regardless of value~~ with a value in excess of \$5.00,
8 from lobbyists registered with the governmental entity on whose behalf
9 they (or their ~~spouse, registered domestic partner, or relative~~) serve, or
10 from any principal or employer of any such registered lobbyist, or from
11 vendors or contractors of such governmental entity. In order to effectuate
12 this provision, no lobbyist shall engage in any lobbying activity prior to
13 registering as a lobbyist with the applicable governmental entity. For
14 purposes of this paragraph, neither Broward County, any municipality
15 within Broward County, or any other governmental entity shall be
16 considered a registered lobbyist, a principal or employer of a registered
17 lobbyist, or a vendor or contractor of any governmental entity within
18 Broward County.

19 b. Elected Officials may accept gifts from other sources given to them in their
20 official capacity, where not otherwise inconsistent with the provisions of
21 ~~Florida Statutes~~ Chapter 112, Part III, Florida Statutes, up to a maximum
22 value of \$50.00 per occurrence. Gifts given to an Elected Official in his or
23 her official capacity up to \$50.00 in value are deemed to be *de minimis*. A
24 governmental entity giving a gift to its own Elected Official shall not be

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscoring type are additions.