

**MEMORANDUM**

**TO:** Commissioner Lois Wexler

**FROM:** Joni Armstrong Coffey, County Attorney

**DATE:** October 21, 2016

**RE:** **Arena Suite Usage by Broward County Commissioners**  
**CAO Files: 16-06E (Gifts) & 16-026.05**

Broward County (the "County") owns the BB&T Center located in the City of Sunrise (the "Arena"). The Arena is operated by private parties (collectively, the "Panthers Entities") under an operating agreement (the "Operating Agreement"). In 2015, the County and the Panthers Entities entered into an amendment to the Operating Agreement, pursuant to which the County committed substantial additional public money to the Arena. In return, part of the consideration received by the County is stated in Section 20.6 of the Operating Agreement. That section reserves to the County an executive suite at the Arena for use "in connection with the promotion of County economic development and tourism for all regular season Team home games at the Arena." While the suite is reserved for the County, no food and beverages will be provided by the Panthers Entities. Rather, food and beverages may be purchased, or in some circumstances may be provided by the Convention & Visitors Bureau, a County agency, via a voucher for products sold at the Arena. You have asked our Office to advise as to the circumstances under which County Commissioners may use the dedicated suite to attend games and accept food and beverages from the County.

Section 112.312(12), Florida Statutes, defines "gift" as "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 the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days," including "[f]ood or beverage" and "[e]ntrance fees, admission fees, or tickets to events, performances, or facilities."

In CEO 01-19, the Florida Commission on Ethics ("Ethics Commission") considered a case involving St. Petersburg City Commissioners who used the City-owned baseball stadium to entertain for a variety of purposes under a City policy that included "economic

development." In that case, the City of St. Petersburg owned the baseball stadium which it leased to a baseball organization. As part of the consideration for that lease, the organization provided the City with a suite, tickets, and parking passes for each home game. The City formulated a written policy for governing use of its suite, tickets, and passes. The usage criteria included promoting economic development and recognizing and rewarding the contributions made by various City employees and members of the public to the City and to the community. Under the policy, City officials would serve as "hosts" to the City's invitees. The specific issue resolved in that case was whether City officials received a reportable gift when they acted as "hosts." The Ethics Commission concluded that the City officials had not received a gift (reportable or otherwise) because they had provided equal or greater consideration to their own agencies when acting as hosts in their official capacities. See CEO 01-19, October 23, 2001, p. 1.

In reaching its conclusion, the Ethics Commission emphasized that it had previously dismissed at least three complaints under "remarkably similar" circumstances involving City of Sunrise officials who, in their public capacities, hosted functions in the City's own local arena to promote economic development. The Ethics Commission had dismissed those complaints after concluding that the City officials had provided equal or greater consideration for their presence in the suite when they were there as representatives of the City. See CEO 01-19, October 23, 2001, p. 2.

In a cautionary note, however, the Ethics Commission distinguished a case involving Miami Beach City Commissioners who received a block of tickets from the City to Broadway shows, ballets, and concerts at the City-owned performing arts theater. See CEO 92-33 July 17, 1992. The Commissioners were permitted to use or give the tickets away at their discretion, for personal use. The Ethics Commission noted that the tickets provided to the City as a condition of the contract the City entered into with its management company and producers were not "gifts" to the City, but were, instead, part of the consideration the City received for leasing its auditorium. However, the tickets were gifts from the City to its own Commissioners because no return consideration was provided by the Commissioners. The Ethics Commission also analyzed the tickets under Rule 34-13.210(2), Florida Administrative Code, and concluded that they were not "benefits" to the City Commissioners associated with their public offices. The Ethics Commission concluded that the tickets were reportable gifts to the extent that their combined value exceeded \$100. See CEO 92-33, July 17, 1992, p. 2.

Based on our review of these opinions and other applicable authority, it is our opinion that when County Commissioners or County employees use the Arena Suite exclusively to entertain County guests for the purpose of attracting tourism and economic development, their service on behalf of the County constitutes adequate consideration for the use of the

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suite, with the end result being that the Commissioners have not received any gifts. Thus, they are not required to reimburse any amount, and are not required to file any gift disclosure. For the same reason, County Commissioners also do not have to disclose food or beverages, or vouchers for food and beverages, provided by the Convention & Visitors Bureau.

Different rules apply when County Commissioners bring their spouses or others to help entertain the County's invited guests. See CEO 06-27, December 6, 2006. Gifts to such people are construed as indirect gifts from the County to the County Commissioner since it is the County Commissioner who is allowed to designate "who will accompany him or her . . . because there is no indication that the companions have an independent relationship with" the County "that would otherwise motivate" the County "to pay" for them. See CEO 06-27, December 6, 2006, p. 3. Therefore, if the value of any gifts to the spouses or other guests, including admission and food and beverages, exceeds \$100, the Commissioner should disclose the gifts.

Our analysis is not impacted by the County's ethics code. Under that code, a Commissioner may accept a gift from the County (which would occur if the Commissioner brought a spouse or guest to a Panthers' game). In that case, the Commissioner would be obligated to disclose the gift pursuant to the ethics code requirements if it exceeded \$100 in value.

This Office has been working with the County Administrator's office to develop proposed policies for use of the Arena Suite, including food and beverages, for economic development and tourism. The County Administration policy memorandum has been distributed under separate cover.

  
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County Attorney

JAC/MAJ/gf

c: Board of County Commissioners  
Bertha Henry, County Administrator  
Evan Lukic, County Auditor