



Memorandum No: 23-002

City Attorney's Office

To: Commissioner John C. Herbst

From: D'Wayne M. Spence, Interim City Attorney

Date: January 20, 2023

RE: Pier Sixty-Six Topping Off Ceremony – Friday, January 27, 2023

On January 18, 2023, Jessi Blakley, Vice President of Tavistock Development Company sent an email to the Mayor and City Commissioners of the City of Fort Lauderdale extending an invitation on behalf of the Pier Sixty-Six team to attend the Topping Off Ceremony at Pier Sixty-Six on January 27, 2023. The Topping Off ceremony is to be followed by lunch for the construction team to which attendees are also invited to attend. In a subsequent email, Ms. Blakely indicated to me that the lunch is organized and funded by Americaribe/Moriarty, a contractor for Tavistock Development Company. The cost for the buffet lunch is \$19.99 per person.

You have asked whether your acceptance of this free lunch would violate ethics law. For the reasons stated below, it is my opinion that acceptance of the lunch provided by Americaribe/Moriarty is not a violation of the Florida Code of Ethics and is not subject to its reporting requirements, however, acceptance of the gift would be a violation of the Broward County Code of Ethics for Elected Officials.

Our office analyzes gift questions under both the state and County ethics codes, as both contain limitations on the acceptance of gifts. A gift, for purposes of ethics in government and financial disclosure required by law, is defined to include food and beverage. Under the state code, there is a \$100 limit on gifts. A reporting individual may accept from a vendor doing business with his or her governmental entity or from a registered lobbyist, Section 112.3148(4), Florida Statutes. There is no value cap on gifts that may be accepted from other sources. The Broward County Code of Ethic for Elected Officials is more restrictive. With few exceptions, an elected official may only accept from lobbyists, principals/employers of lobbyists, contractors, and vendors, directly or indirectly, gifts valued at \$5 or less, and elected officials may only accept gifts given to them in their official capacity from other persons or entities up to a value of \$50. Section 1-19(c)(1), Broward County Code of Ordinances. In examining whether an

indirect gift is being made under the County's code of ethics, local government attorneys examine the Rules of the Florida Ethics Commission relating to indirect gifts which is found at § 34-13.310(8) Florida Administrative Code, and which states:

“(8) Indirect Gifts.

(a) Where a gift is provided to a person other than the reporting individual or procurement employee by a political committee or vendor, by a lobbyist who lobbies the agency of the reporting individual or procurement employee, or by the partner, firm, employer, or principal of a lobbyist, where the gift or the benefit of the gift ultimately is received by the reporting individual or procurement employee, and where the gift is provided with the intent to benefit the reporting individual or procurement employee, such gift will be considered an indirect gift to the reporting individual or procurement employee.

(b) Where a gift or the benefit of a gift is provided to a reporting individual or procurement employee by someone other than a political committee, a lobbyist, or the partner, firm, employer, or principal of a lobbyist, or a vendor, but the gift or the expense of the gift has been provided by or paid for by a political committee, a vendor, or a lobbyist, or the partner, firm, employer, or principal of a lobbyist, who intends thereby to benefit the reporting individual or employee, such gift will be considered an indirect gift to the reporting individual or procurement employee.

(c) Factors which the Commission will consider in determining whether an indirect gift has been made include but are not limited to:

1. The existence or nonexistence of communications by the donor indicating the donor's intent to make or convey the gift to the reporting individual or procurement employee rather than to the intervening third person;

2. The existence or nonexistence of any relationship between the donor and the third person, independent of the relationship between the donor and the reporting individual or procurement employee, that would motivate a gift to the third person;

3. The existence or nonexistence of any relationship between the third person and the reporting individual or procurement employee that would motivate the gift.

4. Whether the same or similar gifts have been or are being provided to other persons having the same relationship to the donor as the third person;

5. Whether, under the circumstances, the third person had full and independent decision-making authority to determine whether the reporting individual or procurement employee, or another, would receive the gift;

6. Whether the third person was acting with the knowledge or consent of, or under the direction of, the donor;

7. Whether there were or were intended any payments or bookkeeping transactions between the third person and the donor, reimbursing the third person for the gift; and

8. The degree of ownership or control the donor has over the third person.

(d) The provisions of this subsection may be illustrated by the following examples:

Example 1: A law firm which lobbies the agency of Reporting Individual C ("C") invites all of its attorneys to attend a weekend retreat. The attorneys are encouraged to bring their spouses or significant others at the firm's expense. C is married to an attorney in the firm and has been asked by her spouse to attend the retreat. The lodging provided to C for the retreat would be considered a gift to C from her spouse and thus not prohibited, because the firm's invitation was extended to C's spouse by virtue of his employment with the firm.

Example 2: Reporting Individual D ("D") hosts a fox hunt attended by other reporting individuals. Lobbyists who lobby the agency of D give money to a third person, who is not a reporting individual, to pay for the food and beverages which will be served at the fox hunt. D orders and prepares the food and beverages. The money provided to the third person by the lobbyists would be a gift to D, because it was given with the intent of benefiting D and his guests at the fox hunt.

Example 3: A principal which employs 10 lobbyists who lobby the agency of Reporting Individual M ("M") channels a gift costing \$1,000 to M through its 10 lobbyists. Although each lobbyist's share of the gift is \$100, the gift would be prohibited because it is an indirect gift from the principal with a value of excess of \$100.

Example 4: Reporting Individual N ("N") and N's spouse have arranged to take a vacation trip together. A lobbyist who lobbies N's agency meets with the spouse and offers to pay for the spouse's travel expenses, which would exceed \$100. The lobbyist and N's spouse know each other only through the lobbyist's involvement with N. This would constitute an

indirect gift to N, and would be prohibited because its value exceeds \$100.”

I have checked our applicable databases and “Tavistock Development Company Pier 66 Ventures, L”, (presumably an abbreviated entry for two separate entities “Tavistock Development Company, LLC”, and “Pier 66 Ventures, LLC”), appears as the principal or employer of lobbyist Stephanie Toothaker. The organizer and funder of the lunch, Americaribe/Moriarty, is not a vendor, contractor, lobbyist, or principal or employer of a lobbyist and as such, absent any other factors, gifts from this entity would be subject to \$50 maximum gift value limitation of the Broward County Code of Ethics for Elected Officials. However, the invitation was provided by a representative of Tavistock Development Company on behalf of the Pier Sixty-Six team, the ceremony and lunch are presented as related events, and Americaribe/Moriarty is a contractor for the Tavistock Development Company applying the factors in § 34-13.310(8)(c) Florida Administrative Code, the lunch appears to be an indirect gift from both “Tavistock Development Company, LLC”, and “Pier 66 Ventures, LLC” and therefore subject to the \$5 gift value limitation of Section 1-19(c)(1)a, Broward County Code of Ordinance. You are, therefore, precluded from accepting the lunch but may attend and accept nonalcoholic beverages which are expressly excluded from this prohibition.

This advisory opinion is issued pursuant to Section 1-19(c)(8) of the Code of Ethics, and may be relied upon by the individual who made the request. This analysis is limited solely to the facts presented. Within fifteen (15) days of receiving this opinion, a copy must be sent in a searchable “pdf” format to ethicsadvisoryopinions@broward.org for inclusion in the searchable database of advisory opinions maintained by the County. I am also providing a copy of this opinion to the Mayor and other city commissioners as a courtesy.

If you have any questions or concerns, please let me know.

cc: Mayor Dean J. Trantalis
Vice Mayor Warren Sturman
Commissioner Steven Glassman
Commissioner Pamela Beasley-Pittman