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2015  
City of Jacksonville  
Ethics Program

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**GIFTS AND TRAVEL**

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*Materials Prepared and Assembled By:*  
Carla Miller, Ethics Director

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June 2015

# **GIFTS AND TRAVEL**

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## GIFTS

**Gift Examples:** a ticket to an event; food/dinner, lunch; memberships, plants and flowers (even if for good occasion); wedding gifts; transportation/hotels; better interest rates; the use of someone's property--staying in their home. Travel to a conference is a gift, even if it is related to your city business. You can receive gifts from relatives, of course. You have 90 days to pay for the "gift"; then it is no longer a gift.

Note: you can never take ANY gift, including a cup of coffee, if there is an understanding that it is in exchange for a vote or action (a bribe..)

You cannot accept any gift from a Political Committee. (FS 112.31485)

1. **Who** is giving you the gift? is it coming directly to you from a vendor who does business (or wants to) with the City? is it coming from a registered lobbyist? BEWARE. First think about whether you want to accept it--what is the appearance of doing so?

The Law: You cannot accept a gift valued at over \$100 from: a lobbyist, a principal or employer of a lobbyist, a person or entity doing business with the City, or someone subject to City permit approval. You cannot accept more than \$250 in one calendar year from one of these people; so if you get an \$80 ticket from Lobbyist "A", that is OK; but if you take four \$80 tickets (\$320 total) in one year from Lobbyist "A", it is NOT OK. If you take something worth \$120, you can pay it under the \$100 to be legal; but consider the appearance of doing this.

Jacksonville Code Sec. 602.701. Prohibited receipt of gifts.

*(a) No officer or employee of the City or of an independent agency, or any other person on his or her behalf, shall knowingly accept, directly or indirectly, any one gift with a value greater than \$100 or an accumulation of gifts in any one calendar year that exceeds \$250 from any person or business entity that the recipient knows is:*

*(1) A lobbyist who lobbies the recipient's agency or executive department;*

*(2) Any principal or employer of a lobbyist who lobbies the recipient's agency or executive department;*

*(3) A person or business entity which is doing business with, or has made written application within the previous six months, to do business with an agency of which he or she is an officer or employee;*

*(4) A person or business entity which is subject to the permit approval of an agency of which he or she is an officer or employee.*

2. **Value of gift.** Make sure you know the value of the gift; if the ticket for an event does not have the value on it, make sure you get the value in writing from the person who gave it to you. If you get 2 tickets, one for you and a guest, you have received a gift of the value of two tickets.

3. **Gifts from "City"**. Sometimes you will get gifts from the City. Example: The Jaguars will give 50 tickets to the City Council president to distribute to Council members. The President of City Council can receive these gifts on behalf of the City and then distribute them. When you get 2 of those tickets, the "gift" is from the City, not the original donor (the Jaguars). All such gifts to the City are posted online with who donated the gifts and who they were distributed to.

#### Jacksonville Code Sec. 602.701. Gifts to the City

(c)The Mayor and the Council Secretary shall identify a mayoral and a council representative who will be officers or employees responsible for the receipt of and distribution of business-related gifts to the City through its executive and legislative branches. The chief executive officer of an independent agency shall identify a designee or designees who will be officers or employees responsible for the receipt of and distribution of business-related gifts to the independent agency. Registries shall be established wherein gifts will be identified by date, donor, type, purpose, and City or independent agency officer or employee carrying out the purpose; and shall be posted on a City or independent agency internet site within 90 days of receipt of the gift. (Examples of gifts covered by this subsection include, but are not limited to, tickets or travel to events where City or independent agency official or employee presence is requested, or travel and per diem to inspect products and equipment, or gifts of personal property to the City or independent agency.)

4. **Reporting Gifts to the State Ethics Commission.** All gifts you receive over \$100 have to be reported to the State Ethics Commission quarterly on a "Form 9". So if a lobbyist takes you out for dinner and pays \$150 for your meal, what do you do? Well, you don't take anything over \$100 from a lobbyist, because doing this violates state and local ethics laws. So you wouldn't report that on a form 9, as you would be reporting that you violated the law. Don't do that in the first place! So what does get reported? If the City Council president gets 50 tickets to distribute for a Jaguars game, and you get 2 tickets with a parking pass, the value could be about \$250 of that gift. (All football tickets will come to you with a value on them.) **It is OK to take tickets over \$100 from "the City", so you can accept these tickets; you just have to report them on your Form 9.**

5. **Honorariums.** This means a payment for you to speak or write something. Usually, it is to attend a conference or seminar and be a speaker. You cannot **ask** people for money (an honorarium) which is related to your City business. If you are asked to be a speaker for an event and someone is paying for your expenses, there are state ethics laws that have to be complied with. See the Ethics Office for guidance. FS Section 112.3215

#### **TIPS**

1. If you go out to eat with a vendor or lobbyist (not recommended), then get your meal billed separately so you can either pay it yourself or show that the bill for your part was under \$100.
2. Run all of your gifts through your Council Assistant so they can log them in, check their value, check with the Ethics Office if necessary, and help you prepare your Form 9, Gift Return quarterly.

## TRAVEL

**IF SOMEONE OTHER THAN THE CITY PAYS FOR YOU TO TRAVEL SOMEWHERE IT IS A GIFT TO YOU PERSONALLY. EVEN IF IT IS A GOOD THING FOR THE CITY FOR YOU TO GO.**

1. **EXAMPLE:** A **non-profit** (like the Gates Foundation) calls you and wants you to speak at one of their conferences about "The future of Public Private Partnerships"--this is something you have worked on extensively as a Council member and you are an expert on this subject. You want to go; it would be good for the City of Jacksonville to highlight what we are doing. They will pay your airfare, hotel, food and conference fee.

THIS IS A GIFT TO YOU. The value is over \$100 and needs to be reported on your Form 9 to the State Ethics Commission.

**LOCAL JACKSONVILLE LAW: Before you travel using anyone's funds other than the City, you must get prior written approval from the Ethics Office and OGC. *Section 106.703 Jax Code.***

You would write up these details and send them to the Ethics Office for guidance.

2. **EXAMPLE:** The president of City Council approves a City travel form for you to travel using City funds to a Florida League of Cities conference. This is OK; you can go because it is from City approved funds on a city travel form.

3. **EXAMPLE:** The Chamber of Commerce of Jacksonville is taking a group of city leaders to Seattle to tour a manufacturing plant that might expand to Jacksonville. They invite you to go and they will pay all expenses. The first thing you need to do is to send an email to the Ethics Office for prior approval, per our local law. We would tell you that you cannot accept funds directly from the Chamber, as they lobby the City. You can go on city funds and if the Chamber wants to pay the City an amount of money to reimburse what the City paid in travel expenses, they can do so.

## STATE GIFT LAWS

### (SECTIONS RELEVANT TO CITY COUNCIL MEMBERS)

112.3148 Reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests....—

(1) The provisions of this section do not apply to gifts solicited or accepted by a reporting individual or procurement employee from a relative.

(2) As used in this section:

(a) "Immediate family" means any parent, spouse, child, or sibling.

(b)1. "Lobbyist" means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decision making of a reporting individual.. 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....

2. With respect to an agency that has established by rule, ordinance, or law a registration process for persons seeking to influence decision making 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 as a lobbyist in accordance with such rule, ordinance, or law or who was during the preceding 12 months required to be registered as a lobbyist in accordance with such rule, ordinance, or law. (Note: Jacksonville does have a lobbyist registration law.) At a minimum, such a registration system must require the registration of, or must designate, persons as "lobbyists" who engage in the same activities as require registration to lobby the Legislature pursuant to s. 11.045.

(c) "Person" includes individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(d) "Reporting individual" means any ..(City Council member)--YOU.

(e) N/A

(f) "Vendor" means a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services.

(3) A reporting individual ... prohibited from soliciting (ASKING FOR) any gift from a vendor doing business with the reporting individual's ... agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

(4) A reporting individual or procurement employee or any other person on his or her behalf is **prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's agency**, a political committee as defined in s. 106.011, or 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 or she 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) A vendor doing business with the reporting individual's or procurement employee's agency; a political committee 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 or her 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.

(b) (lobbyists have to file reports on certain gifts.) --who makes, or directs another to make, an individual gift having a value in excess of \$25, but not in excess of \$100, other than a gift that the donor knows will be accepted on behalf of a governmental entity or charitable organization, must file a report on the last day of each calendar quarter for the previous calendar quarter in which a reportable gift is made. The report shall be filed with the Commission on Ethics,...

(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 water management district created pursuant to s. 373.069, South Florida Regional Transportation Authority, 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; and a direct-support organization specifically authorized by law to support a governmental entity may give such a gift to a reporting individual or procurement employee who is an officer or employee of such governmental entity.

(b) (YOU CAN RECEIVE A GIFT FROM "THE CITY" IN EXCESS OF \$100.) Notwithstanding the provisions of subsection (4), a reporting individual .. 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 water management district created pursuant to s. 373.069, South Florida Regional Transportation Authority, a county, **a municipality**, an airport authority, or a school board if a

public purpose can be shown for the gift; and a reporting individual or procurement employee who is an officer or employee of a governmental entity supported by a direct-support organization specifically authorized by law to support such governmental entity may accept such a gift from such direct-support organization.

(c) (reporting requirements of the entities who give gifts).

(d) No later than July 1 of each year, each reporting individual or procurement employee shall file a statement listing each gift having a value in excess of \$100 received by the reporting individual or procurement employee, either directly or indirectly, from a governmental entity or a direct-support organization specifically authorized by law to support a governmental entity. ....The statement shall list the name of the person providing the gift, a description of the gift, the date or

(7)(a) **The value of a gift** provided to a reporting individual or procurement employee shall be determined using actual cost to the donor, less taxes and gratuities, except as otherwise provided in this subsection, and, with respect to personal services provided by the donor, the reasonable and customary charge regularly charged for such service in the community in which the service is provided shall be used. If additional expenses are required as a condition precedent to eligibility of the donor to purchase or provide a gift and such expenses are primarily for the benefit of the donor or are of a charitable nature, such expenses shall not be included in determining the value of the gift.

(b) **(Pay back within 90 days)** Compensation provided by the donee to the donor, if provided within 90 days after receipt of the gift, shall be deducted from the value of the gift in determining the value of the gift.

(c) If the actual gift value attributable to individual participants at an event cannot be determined, the total costs shall be prorated among all invited persons, whether or not they are reporting individuals or procurement employees.

(d) Transportation shall be valued on a round-trip basis unless only one-way transportation is provided. Round-trip transportation expenses shall be considered a single gift. Transportation provided in a private conveyance shall be given the same value as transportation provided in a comparable commercial conveyance.

(e) Lodging provided on consecutive days shall be considered a single gift. Lodging in a private residence shall be valued at the per diem rate provided in s. 112.061(6)(a)1. less the meal allowance rate provided in s. 112.061(6)(b).

(f) Food and beverages which are not consumed at a single sitting or meal and which are provided on the same calendar day shall be considered a single gift, and the total value of all food and beverages provided on that date shall be considered the value of the gift. Food and beverage consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.



(g) Membership dues paid to the same organization during any 12-month period shall be considered a single gift.

(h) Entrance fees, admission fees, or tickets shall be valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.

(i) Except as otherwise specified in this section, a gift shall be valued on a per occurrence basis.

(j) The value of a gift provided to several individuals may be attributed on a pro rata basis among all of the individuals. If the gift is food, beverage, entertainment, or similar items, provided at a function for more than 10 people, the value of the gift to each individual shall be the total value of the items provided divided by the number of persons invited to the function, unless the items are purchased on a per person basis, in which case the value of the gift to each person is the per person cost.

(k) The value of a gift of an admission ticket shall not include that portion of the cost which represents a charitable contribution, if the gift is provided by the charitable organization.

(8)(a) **FORM 9 REPORTING** Each reporting individual or procurement employee shall file a statement with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less, except the following:

1. Gifts from relatives.
2. Gifts prohibited by subsection (4) or s. 112.313(4).
3. Gifts otherwise required to be disclosed by this section.

(b) -(f) The statement shall include: (SEE FORM 9)

(f) If a reporting individual has not received any gifts described in paragraph (a) during a calendar quarter, he or she is not required to file a statement under this subsection for that calendar quarter.

(9) A person, other than a lobbyist regulated under s. 11.045, who violates the provisions of subsection (5) commits a noncriminal infraction, punishable by a fine of not more than \$5,000 and by a prohibition on lobbying, or employing a lobbyist to lobby, before the agency of the reporting individual or procurement employee to which the gift was given in violation of subsection (5), for a period of not more than 24 months. The state attorney, or an agency, if otherwise authorized, may initiate an action to impose or recover a fine authorized under this section or to impose or enforce a limitation on lobbying provided in this section.

(10) N/A.

**GIFT ACCEPTANCE AND DISCLOSURE**

**MAYOR'S TRAVEL EXPENSES UNDERWRITTEN BY OTHER ENTITIES**

To: *Cindy A. Laquidara, General Counsel, Consolidated City of Jacksonville*

**SUMMARY:**

A mayor's travel to conferences and events paid for by others would not be considered "gifts to the city." Consistent with the legislative intent of Sections 112.3148 and 112.3149, Florida Statutes, and the Commission's precedent, the mayor's travel constituted gifts to him personally. Only where a public official's travel is paid for by his own agency, and where his agency then receives reimbursement from a third party would the reimbursement received by the agency be considered a "gift to the agency." Funds received by the city from third parties and deposited into a public fund which are then used to pay for official travel by city officials could also be considered a "gift to the agency." CEO [91-21](#), CEO [91-37](#), CEO [91-57](#), CEO [92-12](#), CEO [98-8](#), and CEO [07-3](#) are cited.

**QUESTION 1:**

Would expenses of the Mayor's travel to conferences and events paid directly by others be considered gifts to the City, or gifts or honorarium event-related expenses given to him personally?

Under the circumstances presented, the Mayor's travel was a gift or honorarium event-related expenses given to him personally and subject to the acceptance and disclosure provisions in Sections 112.3148 and 112.3149, Florida Statutes.

Through your letter of inquiry and additional correspondence with our staff, we are advised that as the General Counsel for the Consolidated City of Jacksonville, you seek this opinion on behalf of Jacksonville Mayor Alvin Brown. You ask whether contributions of trips and expenses for the Mayor to travel on behalf of the City, paid either directly to him or on his behalf, constitute gifts to him personally for purposes of the "gift" law (Section 112.3148, Florida Statutes), or the "honoraria" law (Section 112.3149, Florida Statutes).

You explain that since his election, the Mayor has had the opportunity to travel out of town on a number of occasions, advocating for the City and marketing Jacksonville as a destination. Some of these trips also involved speaking opportunities. In many instances, the expenses for these trips were underwritten by private individuals or entities, but instead of treating the trips as gifts to the Mayor or, when he was invited to speak, as the receipt of honorarium-event related expenses by him, they were considered to be "gifts to the City." In this

way, you explain, his travel costs did not have a negative impact on the City's budget but, instead, blended public and private resources for the betterment of the City. You question whether this approach comports with Sections 112.3148 and 112.3149, Florida Statutes. We do not believe that it does.

Section 112.3148(4), Florida Statutes, provides:

A reporting individual or procurement employee or any other person on his or her 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 or she 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.

The definition of "gift" in Section 112.312(12), Florida Statutes, includes

Transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking.

Section 112.3149(6), Florida Statutes, provides in pertinent part:

A reporting individual or procurement employee who receives payment or provision of expenses related to any honorarium event from a person who is prohibited by subsection (4) from paying an honorarium to a reporting individual or procurement employee shall publicly disclose on an annual statement the name, address, and affiliation of the person paying or providing the expenses; the amount of the honorarium expenses; the date of the honorarium event; a description of the expenses paid or provided on each day of the honorarium event; and the total value of the expenses provided to the reporting individual or procurement employee in connection with the honorarium event. The annual statement of honorarium expenses shall be filed by July 1 of each year for those expenses received during the previous calendar year. . . .

Since the gift law was first enacted in 1990, we have never concluded that a public officer had not received a gift when he traveled at the expense of someone other than his agency. In CEO [91-57](#), we were confronted with a situation where a state senator traveled to Europe to participate in a NATO conference and to Brazil as part of a trade mission, and in both cases, we concluded that he had received a reportable gift. Although there was no question that a public purpose was served through his travel in both cases, we articulated our view that disclosure should be the goal for every reporting individual who received any of the items listed in the statutory definition of "gift," and that this approach was in accord with the legislative intent articulated through the enactment of Chapter 90-502, Laws of Florida.

Concerning gifts to agencies, this precise issue was litigated in a series of complaints involving officials from Bay County who traveled at the expense of a corrections company to view some of their jail facilities. In **In re Jonathan A. Mantay**, Complaint No. 03-081, COE Final Order No. 06-315 (2006), we found:

8. To summarize and to clarify our view of the gift law in this area, when an individual is transported or provided lodging and it is paid for or provided by another, so long as that individual did not provide equal or greater consideration to the payor or provider for that transportation or lodging, the individual received a "gift" as that term is defined in Section 112.312(12), unless the circumstances are specifically excluded by a paragraph within Section 112.312(12). To the extent that our opinion CEO [91-71](#), which concerned legal services, would imply otherwise, that opinion is revoked.

9. We find this view of the law more reasonable than that proposed by the ALJ, because it does not require that any legal fictions be created, such as a hypothetical 2003 "transfer" to the County of transportation that was provided to the Respondent in 2000 or an [sic] "simultaneous" transfer of lodging provided to the Respondent when the hotel bill was paid. Nor does it require that the employee's agency be considered to have received "lodging" or "transportation," when an agency cannot be transported or lodged.

10. This view of the law also is more consistent with opinions, rendered by the House General Counsel during the first year after the law was enacted, about travel that was taken in an official capacity. For example, in HCO 91-29 the Member was appointed by the Speaker as Florida's representative for a Council of State Governments Environmental Mission to Japan. As part of that representation, he was invited to an educational briefing in Washington to assist him in fulfilling his obligations as a representative. Because of State budget shortfalls, the Council agreed to pay his expenses to Washington, which expenses would normally be paid by the State of Florida. The opinion concluded this would be a reportable gift from the Council, regardless of the fact that it could be argued that the payment of such expenses was

a gift to the State rather than to the Member, as his expenses would otherwise be reimbursable by the State. The Council's payment of a portion of the travel expenses to Japan were also a "gift," notwithstanding that the House paid for some of the travel and the travel was related to fulfilling official duties as a Member of the House. HCO 91-44. See also, HCO 91-09 (the payment or waiver of parking charges would constitute a gift, "notwithstanding that the ultimate beneficiary is the State of Florida, which would be required to reimburse you for the reasonable expenses incurred by you when parking at the airport for state business."); HCO 91-07 ("linkage" institutes operated within the Department of Education providing travel and other expenses for legislators and other public officials when traveling to the foreign linkage partners would constitute a "gift."); and HCO 91-13 (an individual citizen may charter a plane for the purpose of flying the St. Johns County Legislative Delegation round trip between their districts and Tallahassee to address the Governor and Cabinet, but it would constitute a "gift."). Clearly, if the Legislature intended that transportation in one's official capacity for a matter involving a public purpose is not a "gift," these opinions would have reached completely different results.

11. In addition, if it is not a "gift" as defined by the Legislature whenever a public officer or employee travels in an official capacity on public business at the expense of a person or entity other than his or her public agency, we would be forced to ignore the language of two very specific provisions of the gift law. Subparagraphs 112.312(12)(a)7 and (b)7 exclude from the definition of a "gift" transportation "provided to a public officer or employee by an agency in relation to officially approved governmental business." As this language only addresses transportation provided "by an agency," it clearly means that transportation provided by private persons and entities are not excluded from being a "gift," even if the travel has some official purpose. Also, subsection 112.3148(6) allows the gift, but requires a very specific disclosure, when certain governmental agencies give a gift worth over \$100 "if a public purpose can be shown for the gift," even though those agencies may employ lobbyists to influence the recipient's public agency. Again, if it were not a "gift" when what is being provided or paid for ultimately saves money for one's public agency, we would have to ignore this part of the gift law. . . .

More recently, in CEO [07-3](#), we acknowledged that Section 112.3148, Florida Statutes, did not prohibit gifts to agencies or require their reporting; but in that opinion, we were considering a discounted conference registration rate offered to the Office of Financial Regulation, not to individual employees. There, it was up to the agency to designate who would

attend the conference, not the individual employees, with the agency paying other expenses related to their attendance. We do not view the Mayor's travel in the same way. In this case, the Mayor has received invitations and travel expenses to events precisely because he holds office as Mayor of the Consolidated City of Jacksonville. For this reason, we continue to believe that Sections 112.3148(4) and 112.3149(6), Florida Statutes, govern the Mayor's acceptance of travel. Trips from non-prohibited donors may be accepted and then reported pursuant to Section 112.3148(8), Florida Statutes, on a CE Form 9, Quarterly Gift Disclosure, if the value of the trip exceeded \$100. In the same way, honorarium-event related expenses may be accepted but, if paid for by a prohibited donor, disclosed pursuant to Section 112.3149(6), Florida Statutes, on the CE Form 10, Annual Disclosure of Gifts from Governmental Entities and Direct-Support Organizations and Honorarium Event Related Expenses.

The City's desire to reduce the fiscal impact of travel expenses on the City budget by allowing travel costs to be underwritten by others is an understandable goal in these times of economic hardship, and we have consistently construed Section 112.3148, Florida Statutes, as allowing public officers to travel at their agency's expense and then have their agency obtain reimbursement from the donor for their travel without it being considered a reportable or prohibited gift to the public official. In CEO [91-21](#), a supervisor of elections traveled to view a voting machine manufacturer's factory, and we found reimbursement from the manufacturer to the county was a "gift to the agency" which was neither prohibited nor reportable by Section 112.3148, Florida Statutes. In CEO [92-12](#), a PSC employee traveled at agency expense to conduct an audit of a utility and the utility then reimbursed the agency for the employee's expense, and we found that the employee had not received a gift. This is not a question of form over substance, or of allowing indirectly that which could not be done directly: an agency's "up-front" payment of an official's travel expenses ensures that the agency has made a decision, in advance, that the travel is necessary, takes advantage of the agency's transparent processes for approving official travel in advance, and ensures that the traveler is reimbursed at the government rate. In this way, the agency can offset the expense to its taxpayers of necessary official travel, while the public is protected against the potential for abuse which could arise if all travel for which any nominal public purpose could be identified were to be considered a gift to the agency. This approach, in our view, achieves the goals of the gifts and honoraria laws, and is consistent with our precedent.

Question 1 is answered accordingly.

## **QUESTION 2:**

Whether monetary donations to a City-maintained fund that would be used to pay for official travel by the Mayor and other City officials would be considered "gifts to the city?" Under the circumstances presented, Question 2 is answered in the affirmative.

You have asked the Commission to opine on the City's proposal to accept monetary donations from third parties and deposit them into a public account on an ongoing basis, where the funds would then be used to pay for the Mayor's travel, as well that of other officials who have need to travel on City business. You refer to this proposal as the "direct payment" method

which could protect taxpayer dollars while at the same time fund agency-approved, business-related travel.

In CEO [98-8](#), we opined that pursuant to Section 112.3148(3), Florida Statutes, a state legislator could not solicit donations for his legal defense fund from lobbyists or from the partners, firms, employers, or principals of lobbyists who lobbied the Legislature, and that he could not accept contributions greater than \$100 from these entities without violating Section 112.3148(4), Florida Statutes. We said that gifts from non-prohibited donors could be accepted but would have to be reported on a CE Form 9 if they were greater than \$100. In CEO [91-37](#), we opined that a city commissioner could not solicit funds for a newsletter from lobbyists or from the partners, firms, employers or principals of lobbyists who lobbied the city, and that likewise, he could not accept contributions from those same entities that exceeded \$100. We view both of these opinions as distinguishable from the City's proposal because, in both cases, it was the public official who maintained control and access to the donated funds, not a governmental entity. Therefore, where the City receives gratuitous donations from the private sector and then uses the donations to pay for official travel by the Mayor and other officials, we would view those donations as gifts to the City which are neither prohibited nor reportable. This presupposes that the City's process for funding travel costs for its officials through this account is otherwise appropriate, open, transparent, and consistent with law.

Question 2 is answered accordingly.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on March 8, 2013 and **RENDERED** this 13th day of March, 2013.

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Susan Horovitz Maurer, *Chair*