

FILE 2812 — September 13, 2024

GIFT ACCEPTANCE AND DISCLOSURE

MAYOR ACCEPTING A PREFERENTIAL RATE ON A LOAN AND DONATIONS THORUGH THE GOFUNDME PLATFORM

To: *Heather Lindsay, Mayor (Milton)*

SUMMARY:

The mayor of a municipality may accept a preferential rate on a loan from a friend who is not a vendor doing business with her agency, a political committee, a lobbyist who lobbies her agency, or the partner, firm, employer, or principal of a lobbyist of her agency (prohibited sources), but must disclose the preferential rate if the difference between (1) the total interest that will be paid through the life of the loan the reporting individual actually accepted and (2) the total interest that would be paid through the life of an unsecured personal loan of the same loan amount at a contemporary, commercially-available, fair-market interest rate exceeds \$100. Guidance is also provided the solicitation and acceptance of donations through the *GoFundMe.com* platform. Referenced are CEO 04-11, CEO 15-13, CEO 19-13, and CEO 23-5.

QUESTION:

May a reporting individual accept a preferential rate on a loan from a personal friend and may she also solicit and accept donations through the *GoFundMe.com* platform?

This question is answered as follows.

You currently serve as the Mayor of the City of Milton. In your ethics inquiry, you explain that the City Council voted to authorize the City Attorney to file a lawsuit against you in which it is alleged that you failed to produce public records in response to a public records request made by the City Attorney. This litigation is apparently ongoing and you have hired legal counsel. Your legal bills already exceed \$20,000. You are investigating methods of securing funds to pay your legal bills because, aside from the stipend you receive as mayor, you do not currently have another source of income.

In your ethics inquiry, you identify two methods for securing additional funds. First, you indicate you have been offered loans from friends who are not vendors, lobbyists, or principals of lobbyists of the City. According to you, some of these loans may be interest free or have an interest rate well below the fair market rate.

Second, you state you are interested in creating a legal defense fund, or having one created on your behalf, to solicit monetary donations to help cover the litigation costs. This, you state, could potentially occur on an online crowdfunding platform like GoFundMe.com.¹ One friend has offered to set up a GoFundMe page to receive donations for your benefit, but you have asked them to wait until this ethics opinion is rendered.

¹ GoFundMe.com is an online crowdfunding platform that allows users to solicit and receive monetary donations for various causes. When users create a fundraiser, they can add media such as text and photos to describe the purpose of the fundraising request. Additionally, users can set a monetary "goal" amount that they are seeking to receive in donations. People can donate to a fundraiser directly through the website utilizing various payment methods and the website collects and processes those payments to the user.

Against this backdrop, you ask whether and under what circumstances you may accept the loans and donations described above.

We will first address the proposed loans from personal friends.² Where the loans are not being offered to influence your official decision making and are not being offered by vendors, lobbyists, or principals of lobbyists of the City, or by political committees, we may narrow our focus to a certain provision of Florida's gift law, found in Section 112.3148(8), which states:

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.³
2. Gifts prohibited by subsection (4) or s. 112.313(4).⁴
3. Gifts otherwise required to be disclosed by this section.⁵

[Footnotes added.]

Essentially, this provision requires a reporting individual or a procurement employee to disclose all gifts valued in excess of \$100, unless they are otherwise prohibited by other parts of the statute.

² The term "personal friends," as used in this opinion, does not include any person or entity that is a relative; a vendor doing business with your agency; a political committee; a lobbyist of your agency; or the partner, firm, employer, or principal of a lobbyist. If you are offered a loan with a preferential interest rate from one of these individuals or entities, please contact the Commission on Ethics Office of the General Counsel for further ethics guidance.

³ The restrictions of Section 112.3148, Florida Statutes, do not apply to gifts from relatives. § 112.3148(1), Fla. Stat. The term "relative" is defined in Section 112.312(21), Florida Statutes.

⁴ Section 112.3148(4) prohibits reporting individuals and procurement employees from accepting gifts over \$100 from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in Section 106.011, Florida Statutes, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of a lobbyist.

⁵ Gifts from certain other entities, not relevant to this inquiry, have other disclosure requirements. For example, certain gifts from direct-support organizations are disclosed annually on Form 10. § 112.3148(6), Fla. Stat.

The disclosure must occur by filing Form 9, "Quarterly Gift Disclosure," by the last day of the calendar quarter following the quarter when the gift was accepted.

Relevant to your inquiry, a "reporting individual" is anyone who is required by law to file financial disclosure, either Form 6, "Full and Public Disclosure of Financial Interests," or Form 1, "Statement of Financial Interests." § 112.3148(2)(d), Fla. Stat.

Section 112.312(12), Florida Statutes, defines the term "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.

The statutory definition also lists several examples of what constitutes a gift, including "a preferential rate or terms on a . . . loan . . . which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin." § 112.3148(12)(a)5., Fla. Stat.

Based on the facts you present in your inquiry, you are subject to the gift disclosure requirement because you are, as the current mayor of a municipality, a reporting individual. While the loans that you may receive from your personal friends are not, in and of themselves, a gift, as you will be repaying them, you will receive a gift if those loans include a preferential interest rate or terms. § 112.312(12)(a)5., Fla. Stat. You will also receive a gift if a loan is forgiven in whole or in part or if someone repays the loan on your behalf in whole or in part. § 112.312(12)(a)6., Fla. Stat.; see also CEO 04-11. When the value of those gifts exceeds \$100, then disclosure on Form 9 is required.

To make a proper disclosure on Form 9, you must disclose, among other things, the value of the gift. When the gift is a forgiven loan, the amount forgiven will be the value of the gift. CEO 04-11. We have not previously had the opportunity to opine on how to value a preferential rate on a loan. As a general principle, gifts are valued using actual cost to the donor, unless the gift law provides for a more specific valuation method. § 112.3148(7)(a), Fla. Stat. Therefore, we find that the value of a preferential rate on a loan shall be the difference between (1) the total interest that will be paid through the life of the loan that the reporting individual actually accepted and (2) the total interest that would be paid through the life of an unsecured personal loan of the same loan amount at a contemporary, commercially-available, fair-market interest rate.

In conclusion, under the gift law, you may accept loans from personal friends, regardless of the amount loaned or the interest rate. However, if the money is loaned to you at a preferential interest rate, then you must disclose on a Form 9 the monetary benefit derived from the preferential interest rate, as described above, if it exceeds \$100. If the loan is forgiven or repaid, either in whole or in part, then the amount forgiven or repaid must be disclosed on Form 9, if it exceeds \$100.

We next address your inquiry regarding the establishment of a legal defense fund. You indicate that one of your friends has proposed setting up a *GoFundMe* page as part of a legal defense fund for you, where people will be able to make monetary donations over the internet. The first provision within the Code of Ethics that you should be aware of is Section 112.3148(3), Florida Statutes. Section 112.3148(3) states the following:

A reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee'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.

Thus, you may not *solicit* any donations from a vendor doing business with your agency, a political committee, a lobbyist who lobbies your agency, or the partner, firm, employer, or principal of a lobbyist of your agency, regardless of the value of those donations. The Commission has previously found that the word "solicit" includes not just personal or direct requests for donations from a specific entity, but that it also encompasses general or collective requests to a community or group, such as what occurs with a *GoFundMe* page. See In re Douglas Underhill, Complaint Nos. 20-060, 20-073, 20-103 (consolidated), Final Order No. 22-041; also see CEO 23-5, Question 4, in which the Commission found that general requests for donations on a reporting individual's *Substack* page qualified as "soliciting" for purposes of Section 112.3148(3).

Letting the general public know that you need or want their money and will accept their donations is by its very nature a solicitation. We suggested in CEO 23-5, Question 4, that a reporting individual could limit the reach of the solicitation in an online fundraising request by "specify[ing] that the prohibited sources identified above cannot contribute." We reiterate the same guidance here: if you intend to create a *GoFundMe* page, or otherwise publicly announce your willingness to accept donations, or if you intend to authorize someone to do so on your behalf, the solicitation should conspicuously specify that a vendor doing business with the City of Milton, a political committee, a lobbyist who lobbies the City of Milton, or the partner, firm, employer, or principal of a lobbyist of the City of Milton cannot donate to you.

Even if you disclaim your willingness to accept donations from the prohibited sources, a prohibited source might nonetheless make a donation to your legal defense fund on their own initiative. In such a situation, the prohibition in Section 112.3148(4), Florida Statutes, applies. The portion of Section 112.3148(4) that is relevant to you states the following:

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 or procurement employee'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.

This provision prohibits a reporting individual or procurement employee from *accepting* gifts valued in excess of \$100 from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in Section 106.011, Florida Statutes, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, the partner, firm, employer, or principal of a lobbyist. Therefore, as applied to your proposed legal defense fund, you may not accept through *GoFundMe* a donation from one of those sources exceeding \$100. See, e.g., CEO 19-13.

Your inquiry specifically requested guidance about receiving "anonymous donations" through *GoFundMe*. Although a donor may elect to have his or her donation remain anonymous to the public, it is our understanding that the identities of the donors will still be visible to the administrator and beneficiary of the *GoFundMe* page.⁶ The Commission's rules on gift acceptance require that "[r]easonable inquiry shall be made by the reporting individual or procurement employee of the source of the proposed gift to determine whether it is prohibited." Rule 34-13.310(6), Fla. Admin. Code. Thus, if you receive an "anonymous" donation greater than \$100,

⁶ Donating as "Anonymous" on the fundraiser page, <https://support.gofundme.com/hc/en-us/articles/203687114-Donating-as-Anonymous-on-the-fundraiser-page> (last viewed Aug. 24, 2024) ("When donating on GoFundMe, you can make it so your name won't be visible to the public on the fundraiser page. For security reasons, you can't make an entirely anonymous donation, and the organizer, team members, beneficiary, and others will be able to see your name and, sometimes, email address.").

you must take steps, including consulting the donor information available to you as the administrator of a *GoFundMe* page or obtaining information from anyone setting up a *GoFundMe* page on your behalf, to ensure that you discover the identity of those donors and do not accept donations from prohibited sources.

Regarding your legal defense fund, this leaves only a discussion of how to treat donations from personal friends. As we discussed earlier, under Section 112.3148, gifts from donors who are not vendors doing business with the reporting individual's or procurement employee's agency; political committees; lobbyists of the reporting individual's or procurement employee's agency; or the partner, firm, employer, or principal of a lobbyist can always be accepted by a reporting individual or a procurement employee. However, you must disclose on Form 9 each donation you receive in excess of \$100, and those disclosures will be due by the last day of the calendar quarter following the quarter when the gift is due. For example, a gift received September 2024 (third quarter) must be disclosed by December 31, 2024 (end of the fourth quarter). Even in the instance where a friend has set up a *GoFundMe* page for you and delivers the donations to you in a lump sum, you must disclose all the individual donors of the gifts in excess of \$100, while also taking care not to accept any gift exceeding \$100 from a prohibited source, as we cautioned earlier.

In conclusion, you will be able to set up a legal defense fund through the *GoFundMe* platform as long as you strictly adhere to the guidance provided above. You must include language that a vendor doing business with the City of Milton, a political committee, a lobbyist who lobbies the City of Milton, or the partner, firm, employer, or principal of a lobbyist of the City of Milton cannot donate to your legal defense fund. If you still receive a donation in excess of \$100 from one of those sources, you are prohibited from accepting it. If you receive a donation in excess of \$100 from any other source, you may accept it provided that you disclose the gift on a Form 9. If

someone has set up the *GoFundMe* page for you, you must make a reasonable inquiry of the page administrator to learn the identities of the donors so you can comply with the gift law requirements.

Although you do not indicate any facts in your inquiry that would automatically raise concern about a potential violation of Section 112.313(2) or Section 112.313(4), Florida Statutes, these provisions are nevertheless worth discussing.

Section 112.313(2), Florida Statutes, prohibits a public officer from soliciting or accepting anything of value based upon an understanding that his or her official action will be influenced. The statutory provision essentially prohibits a *quid pro quo*, meaning exchanging a thing of value for an official action or decision. See CEO 15-13. Similarly, Section 112.313(4), Florida Statutes, prohibits a public officer or employee, and certain others, from accepting anything of value where he or she knows, or should know with the exercise of reasonable care, that it was offered to influence his or her official action.

There are no facts present in the instant request for guidance that the hypothetical loans or *GoFundMe* donations discussed in your inquiry are being provided to you with the intention of influencing your future official actions as Mayor. However, were such facts to be present in conjunction with donations to you, we would caution you to not accept those gifts. If such motivations are present when accepting any funds, we also caution you that the misuse of office prohibition found in Section 112.313(6), Florida Statutes, and the disproportionate benefit prohibition found in Article II, Section 8(h)(2), Florida Constitution could be implicated.

Your question is answered accordingly.

AL/sjz/aln/ks

cc: Heather Lindsay

Zuilkowski, Steven

From: Zuilkowski, Steven
Sent: Wednesday, July 31, 2024 3:29 PM
To: hflindsay73441@gmail.com
Cc: Steverson, Kathryn
Subject: RE: inquiry regarding receiving funds for legal expenses

Ms. Lindsay:

I am in receipt of your ethics inquiry. Your ethics inquiry raises a lot of difficult questions which might be best addressed with a formal, binding formal opinion from the Commission on Ethics. I do not feel that an opinion rendered by staff alone will be adequate, given the some of the complexities of the facts and issues you present here. Would you consent to the Commission considering this matter as a request for a formal opinion at its September 13 meeting? If you would like to discuss that further on the phone, I'd be happy to do that.

If you do consent to it being considered in the context of a formal opinion, I will have additional questions for you to confirm that I understand all the facts.

Sincerely,

Steven J. Zuilkowski

Deputy Executive Director & General Counsel

Florida Commission on Ethics

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Building E, Suite 200

Tallahassee, FL 32303

From: Heather Lindsay <hflindsay73441@gmail.com>
Sent: Tuesday, July 30, 2024 11:55 AM
To: Stillman, Kerrie <STILLMAN.KERRIE@leg.state.fl.us>
Subject: inquiry regarding receiving funds for legal expenses

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Good morning. I have been the Mayor of my hometown, Milton, Florida, since November 2018. The council and mayor seated before my election in 2018 hired Alex Andrade to be Milton's city attorney in June 2018. Mr. Andrade was elected as state representative for Florida District 2 in November 2018 and continues to serve in both capacities today.

In 2019, I began employment as an assistant city attorney for the City of Pensacola. My job was terminated the day I returned from medical leave, May 22, a week after Mr. Andrade filed a lawsuit against me after receiving authorization from a majority of the City Council to do so.

Steverson, Kathryn

From: Zuilkowski, Steven
Sent: Wednesday, July 31, 2024 4:01 PM
To: Heather Lindsay
Cc: Steverson, Kathryn
Subject: RE: inquiry regarding receiving funds for legal expenses

Thank you for your prompt response. We will start working on this and someone from the legal staff here will be in touch with you.

Steven J. Zuilkowski

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From: Heather Lindsay <hflindsay73441@gmail.com>
Sent: Wednesday, July 31, 2024 3:44 PM
To: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: Re: inquiry regarding receiving funds for legal expenses

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Good afternoon. I consent.

Sincerely,
Heather

On Wed, Jul 31, 2024 at 2:28 PM Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us> wrote:

Ms. Lindsay:

I am in receipt of your ethics inquiry. Your ethics inquiry raises a lot of difficult questions which might be best addressed with a formal, binding formal opinion from the Commission on Ethics. I do not feel that an opinion rendered by staff alone will be adequate, given the some of the complexities of the facts and issues you present here. Would you consent to the Commission considering this matter as a request for a formal opinion at its September 13 meeting? If you would like to discuss that further on the phone, I'd be happy to do that.