CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD

AO 2026-03 – September 15, 2026

MISUSE OF PUBLIC POSITION
ORD. NO.: 2-8

SOLICITATION OR ACCEPTANCE OF GIFTS
ORD. NO.: 2-15

To: Name withheld at person's request.

SUMMARY:

A City employee does not technically violate the Tallahassee Ethics Code merely by making a personal loan to a City vendor. The Tallahassee Ethics Code does not contain a prohibition against conflicting employment or contractual relationships comparable to Section 112.313(7), *Florida Statutes*. The Board emphasizes, however, that the absence of an express local prohibition should not be construed as approval of the proposed conduct. A supervisor entering into a personal creditor relationship with a vendor whose work is regulated by the supervisor's department and inspected by the supervisor's subordinates creates a serious appearance of impropriety and places the employee's private financial interests in direct proximity to his or her public responsibilities. The Board considers such an arrangement highly inappropriate and strongly discourages the inquirer from entering into the proposed loan.

If the inquirer nevertheless proceeds with the loan, extraordinary measures must be taken to ensure that the private financial relationship does not affect the performance of his or her public duties. Section 2-8, Misuse of Public Position, prohibits the inquirer from using his or her City position, City resources, supervisory authority, or official duties to provide a special privilege or benefit to the vendor or to protect the inquirer's financial interest in repayment of the loan. The inquirer therefore must be separated, to the greatest extent practicable, from City decisions involving the vendor and from matters in which the vendor may compete for additional City work.

Although the definition of "gift" applicable to the Tallahassee Ethics Code includes preferential rates or terms on a loan, Section 2-15 prohibits a covered individual from *accepting or soliciting* gifts from certain prohibited donors. Here, the inquirer proposes to provide the loan, at an interest rate of two percent, rather than receive a preferential loan from the City vendor. The proposed loan, therefore, would not constitute the inquirer's solicitation or acceptance of a prohibited gift.

The proposed transaction presents more substantial concerns under the state ethics code. If the loan is made directly to the business entity that is doing business with the inquirer's agency, the resulting creditor relationship would appear to implicate the first portion of Section 112.313(7)(a), *Florida Statutes*, which generally prohibits a public employee from holding a contractual relationship with a business entity doing business with his or her

agency. If the loan instead is made to the owner personally, application of the first portion of the statute may depend upon the identity of the City vendor and the capacity in which the owner receives the loan. Regardless of the identity of the borrower, the creditor relationship also may implicate the second portion of Section 112.313(7)(a), because the inquirer supervises employees who inspect the vendor's work.

The Tallahassee Independent Ethics Board does not render advisory opinions determining compliance with Chapter 112, Part III, *Florida Statutes*. Accordingly, before proceeding with the proposed loan, the Board recommends that the inquirer seek guidance from the Florida Commission on Ethics regarding the application of the state ethics code.

FACTS:

The inquirer is a City employee who works in a department that regulates City vendors. The inquirer has a personal friendship with an individual associated with a business that is a registered City vendor and is regulated by the inquirer's department. Employees supervised by the inquirer inspect work completed by the vendor as part of their official City responsibilities. The facts provided do not indicate whether the inquirer personally conducts these inspections, but the employees who perform the inspections are his or her subordinates.

The vendor is in need of funds, and the inquirer proposes to loan money to the vendor from the former's personal funds. The proposed loan would bear interest at a rate of two percent. The amount to be loaned was not disclosed. The inquirer has indicated that this rate is substantially below a customary commercial or market rate.

The facts presented do not indicate that the inquirer intends to use his or her City position to assist the vendor, influence the employees who inspect the vendor's work, or treat the vendor differently because of the proposed loan.

The inquirer seeks guidance regarding whether making the proposed loan would violate the Tallahassee Ethics Code.

QUESTION #1:

Would a City employee violate Section 2-8 of the Tallahassee Ethics Code, Misuse of Public Position, by making a personal loan to a City vendor when employees under the inquirer's supervision inspect work performed by the vendor?

This question is answered in the negative, subject to the restrictions and conditions set forth below.

ANALYSIS #1:

The Tallahassee Ethics Code prohibits City employees from misusing their official position, City property, or City resources. The applicable provision states:

> No public official or employee of the city shall use or attempt to use their official position or any city property or resource which may be within their trust, or perform or fail to perform, their official duties, in a manner inconsistent with the proper performance of the official's or employee's office and which the official or employee knows or should know with the exercise of reasonable care will result in a special privilege, benefit, or exemption for the employee, official, or others.

§ 2-8, TALLAHASSEE, FLA., CODE OF ORDINANCES (2026).

The prohibition does not require proof of wrongful or corrupt intent. Instead, the inquiry focuses upon whether the employee uses or attempts to use the employee's position or City resources, or performs or fails to perform official duties properly, in a manner inconsistent with his or her duties and where the employee knows or reasonably should know that the conduct will result in a special privilege or benefit.

The Tallahassee Ethics Code does not contain a separate prohibition against a City employee entering into a private contractual or financial relationship with a person or business that does business with the City. Therefore, the existence of a personal loan between the inquirer and a City vendor alone is not sufficient to establish a violation of Section 2-8.

The analysis changes, however, if the private financial relationship affects the inquirer's performance of his or her City duties.

Here, the inquirer proposes to become a creditor of a City vendor. The vendor will have a financial obligation to repay the inquirer, while employees under the inquirer's supervision are responsible for inspecting work performed by that same vendor. This relationship creates circumstances in which the inquirer's private financial interests and official responsibilities may overlap.

Nevertheless, the fact that the proposed transaction does not itself violate Section 2-8 of the Tallahassee Ethics Code should not be understood as an endorsement of the arrangement. The Board finds the proposed creditor relationship highly inappropriate. The inquirer would acquire a private financial interest in the vendor's continued financial success and ability to repay the loan at the same time that the vendor performs work subject to oversight by the inquirer's department and subordinates. Even though the appearance of impropriety alone does not establish a violation of Section 2-8, such an arrangement reasonably may cause members of the public, competing vendors, and other City employees to question whether the vendor is receiving impartial treatment.

If the inquirer nevertheless proceeds with the loan, extraordinary caution and substantial separation from City matters affecting the vendor would be necessary to avoid conduct that could give rise to a future violation of Section 2-8. The inquirer must not use his or her official authority, directly or indirectly, to improve the vendor's ability to obtain City work, successfully perform that work, receive payment, avoid corrective action, or otherwise improve the vendor's financial position and, as a result, its ability to repay the inquirer.

Among other precautions, the inquirer should not participate in developing or reviewing specifications, scopes of work, minimum qualifications, evaluation criteria, or other requirements for an Invitation to Bid, Request for Proposals, or other solicitation when the inquirer knows or reasonably expects that the vendor may compete for the work. The inquirer likewise should not participate in screening, scoring, evaluating, ranking, recommending, or selecting proposals or bids submitted by the vendor or its competitors, in contract negotiations involving the vendor, in decisions concerning the award, amendment, renewal, extension, or termination of the vendor's City work, or in decisions affecting payment to the vendor.

The same separation is necessary with respect to the regulation and inspection of the vendor's work. To the extent practicable, the inquirer should not assign or direct inspections involving the vendor, advise subordinates how the vendor's work should be reviewed, influence the interpretation or application of inspection standards, review or alter substantive inspection findings, intervene in corrective or enforcement action, expedite approvals, or otherwise exercise supervisory authority in a manner that could affect the vendor differently from similarly situated vendors. This separation should extend not only to decisions favorable to the vendor, but also to decisions involving competing vendors where the inquirer's participation could indirectly improve the vendor's competitive position.

The inquirer also must not use non-public City information, City resources, or information obtained through his or her supervisory position to advance the vendor's interests or protect the inquirer's financial interest in repayment of the loan. Given the breadth of the inquirer's supervisory responsibilities, the Board strongly recommends that any screening arrangement be established in advance and documented through the appropriate City management channels so that responsibility for matters involving the vendor is assigned to personnel who are not subject to the inquirer's direction on those matters.

These precautions do not transform an otherwise prohibited relationship into a permissible one under state law, nor does the Board determine that they would be sufficient to satisfy Section 112.313(7)(a), *Florida Statutes*. They are identified solely to explain the measures necessary to minimize the risk that the proposed private financial relationship could lead to a future misuse of public position under the Tallahassee Ethics Code.

The Ethics Board emphasizes that these safeguards address only the potential application of Section 2-8 of the Tallahassee Ethics Code. The absence of a local ordinance prohibiting the contractual relationship itself does not mean that the proposed transaction is permissible under other applicable law, including the state ethics code.

CONCLUSION #1:

Accordingly, based on the facts presented by the inquirer and this Board's reliance on those facts, the Tallahassee Independent Ethics Board concludes that making a personal loan to a City vendor, standing alone, does not constitute misuse of public position in violation of Section 2-8 of the Tallahassee Ethics Code. This is a narrow legal conclusion resulting from the language of the existing ordinance and should not be construed as the Board's approval of the proposed conduct.

The Board considers a personal creditor relationship between a City supervisor and a vendor whose work is regulated by the supervisor's department and inspected by the supervisor's subordinates to be highly inappropriate and strongly discourages the inquirer from entering into the proposed loan. Even in the absence of an immediate violation, the relationship creates a substantial appearance of impropriety and an ongoing risk that the employee's private financial interests may intersect with the performance of his or her public duties.

If the inquirer nevertheless proceeds, he or she must exercise extraordinary caution and remain separated, to the greatest extent practicable, from procurement, selection, inspection, regulatory, contractual, payment, enforcement, and other City matters that could affect the vendor or its competitors. The inquirer may not use or attempt to use his or her City position, supervisory authority, City resources, or official duties to provide a special privilege or benefit to the vendor or to protect the inquirer's private financial interest in repayment of the loan.

QUESTION #2:

Would the proposed loan violate Section 2-15 of the Tallahassee Ethics Code, Solicitation or Acceptance of Gifts, because the inquirer proposes to charge the City vendor an interest rate of two percent, which is below a customary market rate?

This question is answered in the negative.

ANALYSIS #2:

The Tallahassee Ethics Code prohibits covered individuals from knowingly, directly or indirectly, accepting or soliciting gifts from certain prohibited donors. The applicable provision states:

> No covered individual shall knowingly, directly or indirectly, accept or solicit a gift of any value from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lessee of city property, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the city, or from any potential vendor or lessee that is currently engaged in procurement or negotiations with the city or a bid protest.

§ 2-15(a), TALLAHASSEE, FLA., CODE OF ORDINANCES (2026).

The Tallahassee Ethics Code incorporates the state law definition of "gift." That definition includes "[a] preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate" and is generally not otherwise "available to similarly situated members of the public[.]" *See* § 112.312(12), FLA. STAT. (2026).

Thus, receiving a below-market loan can constitute the receipt of a gift for purposes of the applicable gift laws. The facts presented here, however, describe the opposite transaction.

The inquirer would not be receiving the loan or receiving preferential terms from the City vendor. The inquirer proposes to provide personal funds to the vendor and to charge the vendor two percent interest. To the extent the below-market interest rate constitutes a preferential benefit, that benefit would be received by the vendor, who is the borrower, and not by the inquirer.

Accordingly, even if the inquirer meets the local ethics code's definition of a "covered individual," the proposed transaction does not involve the inquirer soliciting or accepting a preferential loan or other gift from the vendor.

The fact that the vendor would pay interest equal or below a customary rate to the inquirer does not alter this conclusion. The interest payment would be part of the consideration required under the loan agreement rather than, based upon the facts presented, a gratuitous payment to the inquirer. If, however, the vendor were to provide the inquirer with some separate thing of value, forgive an obligation owed by the inquirer, provide some benefit outside the agreed loan transaction, or pay interest at a rate above the customary rate, a separate gift analysis could be required.

CONCLUSION #2:

Accordingly, based on the facts presented by the inquirer and this Board's reliance on those facts, the Tallahassee Independent Ethics Board concludes that the inquirer would not violate Section 2-15 of the Tallahassee Ethics Code by providing the City vendor with a personal loan at a two-percent interest rate.

Although preferential terms on a loan may constitute a "gift," the preferential benefit in the transaction described would flow from the inquirer to the vendor. While Section 2-15 prohibits a covered individual from soliciting or accepting gifts from specified prohibited donors, it does not prohibit the covered individual from providing a preferential loan to another person.

STATE ETHICS CODE ISSUES OUTSIDE SCOPE OF ADVISORY OPINION

Although the proposed transaction does not, standing alone, violate the provisions of the Tallahassee Ethics Code discussed above, it presents materially different issues under the state ethics code.

The Tallahassee Ethics Code does not contain provisions equivalent to Section 112.313(3), *Florida Statutes*, addressing doing business with one's agency, or Section 112.313(7), *Florida Statutes*, addressing conflicting employment or contractual relationships. As such, the Tallahassee Independent Ethics Board does not render advisory opinions determining compliance with Chapter 112, Part III, *Florida Statutes*. Accordingly, the following discussion is intended only to identify potential state law concerns, and the Florida Commission on Ethics should be consulted for an authoritative determination.

The following discussion is therefore intended only to identify potential state law concerns presented by the facts and should not be construed as a determination by this Board that the inquirer has violated or would violate the state ethics code.

DOING BUSINESS WITH ONE'S AGENCY
Section 112.313(3), *Florida Statutes*

Section 112.313(3), *Florida Statutes*, generally prohibits certain transactions in which a public employee or officer, acting in his or her official capacity, purchases goods or services from a business in which the employee has a specified ownership or management interest. This same statute also prohibits a public employee or officer, acting in his or her private capacity, from selling goods or services to his or her governmental agency.

Based on the facts presented, neither prohibition appears directly applicable. The inquirer does not appear to own or hold a management interest in the vendor, and the proposed creditor relationship itself does not constitute a "material interest" as defined by state law.

In CEO 81-36, the Florida Commission on Ethics similarly considered a public employee who was a creditor of a private corporation and analyzed the creditor relationship primarily under Section 112.313(7)(a), rather than Section 112.313(3).

Accordingly, Section 112.313(3) does not appear to present the principal state law issue under the facts provided.

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP
Section 112.313(7)(a), *Florida Statutes*

Section 112.313(7)(a), *Florida Statutes*, presents a more significant concern. The statute generally prohibits a public officer or employee from holding an employment or contractual relationship with a business entity that is doing business with, or subject to the regulation of, the employee's agency. It also prohibits a contractual relationship that creates a continuing or frequently recurring conflict between the employee's private interests and public duties or impedes the full and faithful discharge of those duties.

A loan creates a contractual relationship between lender and borrower, and the Florida Commission on Ethics has treated creditor relationships as contractual relationships for purposes of Section 112.313(7)(a). *See* CEO 81-36 (June 18, 1981); CEO 20-4 (Mar. 11, 2020).

If the proposed loan is made directly to the business entity that is the City vendor, the first portion of Section 112.313(7)(a) may apply because the inquirer would have a contractual relationship with a business entity doing business with the inquirer's agency. Depending on the nature of the inspections performed by the inquirer's subordinates, the separate prohibition concerning a business entity "subject to the regulation of" the employee's agency also may be implicated.

Florida Commission precedent indicates that the first portion of Section 112.313(7)(a) generally prohibits the contractual relationship itself and is not necessarily cured by recusal from governmental matters involving the private entity. *See* CEO 20-8 (Sept. 11, 2020) (finding that a councilmember's contractual relationship with a business entity doing business with or subject to regulation by his agency remained prohibited even where another firm handled the matter and the councilmember abstained from voting).

The analysis may differ if the registered City vendor is a separate corporation or limited liability company and the loan is made solely to its owner in his or her individual capacity. The Florida Commission has recognized a distinction between a contractual relationship with an individual and a contractual relationship with the separate corporation owned by that individual. That distinction may not exist, however, if the individual personally is the City vendor or operates as a sole proprietor. *See* CEO 96-31 (Dec. 3, 1996) (finding no prohibited contractual relationship where the official's relationship was with an individual business partner or investor, rather than with the separate corporation doing business with the City).

Regardless of the identity of the borrower, the second portion of Section 112.313(7)(a) also presents a concern. The inquirer would have a private financial interest in repayment of the loan while supervising City employees who inspect the vendor's work. Florida Commission precedent has found prohibited conflicts where an employee's private financial interests overlap with persons subject to the employee's public supervision or responsibilities. *See* CEO 09-3 (Jan. 28, 2009) (fire lieutenant's private company could not provide services to personnel whom he evaluated or recommended for personnel action); CEO 15-2 (Apr. 22, 2015) (teacher prohibited from engaging in private sales involving students for whom she had public responsibilities or employees whom she supervised or evaluated).

In CEO 81-36, by contrast, the Commission found no prohibited conflict where a creditor relationship involved a corporation dealing with a different governmental division and the employee had no responsibility concerning that corporation. The facts here are materially different, because the vendor's work falls within the responsibilities of employees supervised by the inquirer.

The Florida Commission has recognized that complete separation or conflicts-screening procedures may, in some circumstances, be relevant to the second portion of Section 112.313(7)(a). *See* CEO 18-12 (Aug. 1, 2018) (finding no prohibited conflict where the official's private employment responsibilities were reassigned so that he had no duties involving the corporate subsidiary doing business with his county); CEO 20-4 (Mar. 11, 2020) (finding no prohibited conflict in a seller-financed law firm sale where safeguards included no access to former client information, no reversionary interest upon default, and screening from matters involving former clients).

Whether an effective separation or screening arrangement could eliminate the potential conflict here, however, is a state law question that should be addressed by the Florida Commission on Ethics. Still, screening or recusal would not necessarily cure a prohibited contractual relationship under the first portion of the statute.

ABSENCE OF COMPARABLE PROVISIONS IN TALLAHASSEE ETHICS CODE

This advisory opinion again illustrates a significant gap in the Tallahassee Ethics Code. Sections 112.313(3) and 112.313(7), *Florida Statutes*, prohibit categories of private business and contractual relationships, because those relationships themselves may compromise the objective performance of public duties. The Tallahassee Ethics Code contains no comparable provisions. As a result, conduct that presents a serious conflict of interest under state law may fall outside the jurisdiction of the Tallahassee Independent Ethics Board unless and until the employee actually misuses his or her public position in violation of Section 2-8.

Here, the limitations created by the absence of comparable local provisions are particularly evident. A City supervisor proposes to become a personal creditor of a vendor regulated by the supervisor's department and inspected by the supervisor's own subordinates. The Board considers the arrangement highly inappropriate and believes it creates obvious concerns regarding impartiality and public confidence. Nevertheless, because the Tallahassee Ethics Code does not contain local prohibitions comparable to Sections 112.313(3) and 112.313(7), *Florida Statutes*, the Board cannot conclude that the financial relationship itself violates the local ethics code.

The Board has previously submitted proposed amendments to the City Commission that would add local prohibitions addressing doing business with one's agency and conflicting employment or contractual relationships. Those proposed amendments remain pending before the City Commission. Until comparable provisions are incorporated into the Tallahassee Ethics Code, City employees seeking prospective guidance may encounter situations in which conduct raises substantial conflict-of-interest concerns but does not independently violate the local ethics code.

The Board continues to recommend adoption of comparable local provisions so that City employees may receive clear guidance under the Tallahassee Ethics Code and the Board may address such conflicts prospectively.

STATE LAW RECOMMENDATION

The Tallahassee Independent Ethics Board does not render an opinion as to whether the proposed loan would violate Sections 112.313(3) or 112.313(7), *Florida Statutes*.

Based on the facts presented, Section 112.313(3) does not appear to be the primary state law concern. Section 112.313(7)(a), however, presents a substantial potential conflict. A loan directly to the City vendor may create a prohibited contractual relationship with a business entity doing business with or subject to the regulation of the inquirer's agency. A loan to the owner individually may present a different issue depending upon the identity of the registered vendor and the capacity in which the owner receives the loan. In either circumstance, the creditor relationship may also create a continuing or frequently recurring conflict because the inquirer supervises City employees who inspect the vendor's work.

Accordingly, the Board strongly recommends that the inquirer not proceed with the proposed loan unless and until he or she has sought guidance from the Florida Commission on Ethics concerning the application of Section 112.313(7)(a), *Florida Statutes*, and any related provisions of the state ethics code. The absence of a technical violation of the Tallahassee Ethics Code should not be understood as an indication that the proposed transaction is appropriate or advisable.

ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on September 15, 2026, and **RENDERED** this 15th day of September 2026.

APPROVED:

PATRICK KELLY, Chair
Tallahassee Independent Ethics Board

ATTEST:

DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:

JOHN LAURANCE REID
Board Counsel