

FLORIDA SHERIFFS ASSOCIATION

LEGAL ALERT



ETHICS LAWS/GIFTS AND DISCLOSURE REQUIREMENTS

The Legislature has enacted comprehensive legislation¹ that expands the class of persons who are subject to gift and disclosure requirements and places further restrictions on the acceptance of gifts by sheriffs and certain personnel. The new legislation, which took effect May 1, 2013, is important to sheriffs as well as vendors.

As a result of the recent statutory amendments, sheriffs are precluded from accepting gifts of more than \$100 from vendors who are doing business with a Sheriff's Office. Gifts from political action committees disguised as campaign contributions are also prohibited. Furthermore, sheriffs' finance directors may now be subject to the same gift restriction and reporting requirements as sheriffs.

Additionally, the Ethics Commission has been given additional enforcement measures to collect unpaid fines. Ethics training is also required for constitutional officers, including sheriffs, on an annual basis. The following is a summary of the new law.

Prohibited Activities: Solicitation or Acceptance of Gifts and Honoraria by Sheriffs

Under the legislation, sheriffs are precluded from accepting gifts of more than \$100 in value from a vendor, defined as a business entity which is doing business directly with a sheriff's office. Previously, according to section 112.3148, Florida Statutes, a sheriff could not solicit a gift from a lobbyist, regardless of value. Furthermore, a sheriff could not accept a gift of more than \$100 in value from a lobbyist. These prohibitions regarding gifts from lobbyists remain unchanged under the new law.

The definition of a lobbyist is not restricted to the traditional concept of one who lobbies the legislature. Rather, as defined in section 112.3148(2)(b)1., Florida Statutes, a lobbyist is a person who, for compensation, sought during the preceding 12 months to influence the decision-making of a reporting

¹ Ch. 2012-36, Laws of Fla.

individual, such as a sheriff, or to influence the agency of the reporting individual. An owner of a business or a sales representative, for example, who solicited business from a sheriff's office in the past year, regardless of success, would therefore be considered a lobbyist.

Under the new law a sheriff cannot accept a gift from a lobbyist or vendor valued at more than \$100. Gifts that do not exceed \$100 in value, such as a meal or other gift, may be accepted, but would be required to be reported by the lobbyist or the vendor if valued between \$25 and \$100 (CE Form 30).

A violation of section 112.3148 may be avoided by reimbursing the vendor or lobbyist in part or in full. If a vendor paid for a dinner which would have cost the sheriff \$150, for example, the sheriff could pay the vendor \$50 within 90 days and accept the meal as a gift. If the value of the meal for the sheriff and his spouse totaled \$300, payment to the vendor of at least \$200 by the sheriff within 90 days would be required. The 90-day period runs from the date the gift was accepted — the date of the dinner.

If partial reimbursement is made, the gift would be reported by the lobbyist or vendor as previously stated because the resulting value falls within \$25- to- \$100. No report is required if the vendor or lobbyist is reimbursed for full value or, at the very least, an amount that results in a value of \$25 or less.

It is important to keep in mind, however, that section 112.313(2), (4), Florida Statutes, prohibits a public officer or employee from accepting payment, regardless of the amount, which would influence any action taken in his or her official capacity, such as entering into a contractual agreement for goods and services. Accepting a gift while the contract was pending could be perceived as influencing the decision and could lead to a complaint of an ethics violation.

It should also be noted that a sheriff cannot accept indirectly what could not be given directly. If a gift that exceeds \$100 in value is offered, such as a hunting or fishing trip, greens fees, or a dinner, a sheriff should determine who is paying for the gift, to avoid any violations of section 112.3148, Florida Statutes. If a vendor (a person doing business with the sheriff's office) or lobbyist (an individual who solicited business from the sheriff's office in the past 12 months) is ultimately paying for the gift, it should be declined unless the sheriff reimburses the lobbyist or vendor within 90 days. As previously stated, reimbursement of full value is certainly an option but if the vendor or lobbyist is paid an amount which brings the value of the gift to an amount not exceeding \$100, the gift may be accepted.

Sheriffs are also precluded from accepting honoraria from vendors as well as lobbyists. Previously, pursuant to section 112.3149, Florida Statutes, a sheriff could not solicit any payment from anyone for a speaking engagement or a writing, which was published or was intended to be published if the subject

related to the sheriff's official duties. If invited to speak at an event, a sheriff could address a topic related to his or her public office, such as crime prevention, and could accept payment for actual expenses such as transportation, food, and lodging.

Under the new law, nothing has changed regarding honoraria from lobbyists. Now, however, a sheriff cannot solicit payment from anyone for an oral presentation or for a written publication on a matter related to the sheriff's official duties. If asked to speak, a sheriff could address a matter related to the sheriff's official duties and accept payment for actual expenses. In any case, if a lobbyist or vendor paid the sheriff's expenses, such as transportation or lodging, the sheriff must report the expenses (CE Form 10).

Another change in the ethics laws relates to campaign contributions. A new law, section 112.31485, Florida Statutes, prohibits a reporting individual, i.e. a sheriff, from soliciting or knowingly accepting from a political action committee, a "gift". For the purpose of this statute, a gift essentially means anything of value, such as a purchase, loan, or transfer of funds that is not primarily related to political (campaign) activities authorized by chapter 106, Florida Statutes. The apparent intent is to preclude political action committees from misusing section 112.312(12)(b)2., Florida Statutes, which provides that campaign contributions, including contributions by political action committees, are not considered gifts for the purposes of the ethics laws.

Finance directors

The reporting requirements of section 112.3145, Florida Statutes, are now extended to a finance director of a county, municipality, or political subdivision. The issue of whether a sheriff is a political subdivision for purposes of the ethics laws may ultimately be decided by the Ethics Commission, but for now, sheriffs should assume that their finance directors are required to comply with the disclosure requirements.

Therefore, a finance director who accepts a gift valued in excess of \$100 should report the gift on the quarterly report (CE Form 9) to the Ethics Commission. Unless reimbursement is made as discussed above, gifts exceeding \$100 in value should not be accepted from a lobbyist or vendor.

Similarly, sheriffs should presume that the financial disclosure requirements also apply to their finance directors. If a Sheriff hires or appoints a finance director after the effective date of the law, May 1, 2013, the finance director should file a financial disclosure statement with the Ethics Commission within 30

days of appointment. Finance directors who held this position prior to May 1, 2013, would not be required to file the disclosure statement until July 1, 2014. As in the case of the quarterly financial disclosure reports, these forms (CE Form 1) are readily available from the Commission.

Unfortunately, the legislation does not define “finance director”. Many of the larger agencies have a position specifically identified by such a title, or as “comptroller”. In view of the duties traditionally associated with these positions, it should be assumed for the present that the new law applies to these employees.

However, in some of the smaller agencies, a staff member may wear several hats, performing duties relating to payroll and human resources, and other administrative functions. In such a case this employee may not necessarily consider himself or herself to be a finance director. If the employee is primarily responsible for duties commonly associated with a finance director, such as assisting with budget preparation, managing payroll, overseeing accounts payable, travel and inventory, or performing similar functions, it may be wise for the sheriff to inform this employee of the recent changes in the laws for compliance.

Penalties

For violations of the ethics laws, such as improperly accepting gifts or failing to timely file financial disclosure statements or quarterly gift reports, the Ethics Commission has had longstanding authority to impose fines, which cannot be paid from public funds. The new law creates section 112.31455, Florida Statutes, which sets forth procedures for collection of fines, including salary deductions and garnishment of wages. A statute of limitations of 20 years from the date of the Commission’s order imposing a penalty has also been established for the collection of any unpaid fines.

Training

Constitutional officers, including sheriffs, are now required to receive a minimum of four hours of ethics training annually. This training must cover the Sunshine Amendment to the Florida Constitution (Article II, section 8), the Code of Ethics for Public Officers and Employees, and the public records and

Government in the Sunshine laws. This training requirement can be satisfied by continuing professional education seminars, such as the training provided by the FSA.

In conclusion, the statutory changes to the ethics laws will impact vendors and sheriffs and may also affect sheriffs' finance directors. It should be noted that the Florida Commission on Ethics has published a guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees, which is available through the Commission's website at www.ethics.state.fl.us. The Commission's staff will also respond to requests for opinions on ethics issues and may be contacted at (850) 488-7864. As always, questions can be directed to a sheriff's legal advisor or to FSA General Counsel Wayne Evans.

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