

General Counsel Guidance: Gifts, Gratuities and Favors—Standards of Business Conduct 12/2016

Prohibitions. In many situations, Florida law and UF policies prohibit UF faculty, staff, officers, trustees (“UF personnel”) from soliciting or accepting gifts, gratuities, favors or anything of value (“gift”). A “gift” includes, for example, meals, food, candy, beverages, travel, entertainment, event tickets, parties (even at a home), tail-gating snacks, being hosted in a sports box, receptions, outings (e.g., golf, fishing), items (e.g., flowers, wine, pens, any other item), loans, and favors/benefits/advantages.

When in doubt—or as an easy rule that minimizes the need for complex analysis—UF personnel and their spouses and minor children should pay full cost/value (even for hospitality or something that is free to others) and not solicit, accept or partake in a gift from any individual (even a friend) or any entity that is (a) a UF vendor, (b) seeking to become a UF vendor, (c) an executive branch lobbyist, or (d) anyone seeking to influence or garner good will for UF action, policy or procurement, or (e) is employed by, a client of, or represents, one listed in (a), (b), (c) or (d). Also, as an easy rule—if UF personnel have any knowledge or involvement—children of any age, parents and siblings should not accept or partake in a gift. S. 112.3148(2)(a), (3), (4). Assume gifts from vendors, potential vendors, and lobbyists/principals of lobbyists are to garner UF good will. S. 112.313(2), (4), Florida Statutes.

Certain Permitted Gifts. Gifts of any amount may be given to UF (to the Foundation is best). Gifts of any amount are permitted to a UF employee or official and family by (a) a relative, or (b) a personal friend (who is **not also** a UF vendor, potential UF vendor, or lobbyist/principal of a lobbyist.), or (c) UF or a UF Direct Support Organization for a public purpose. (UF affiliates that are not DSOs are not covered by this special permission.) S. 112.3148(6), Florida Statutes.

Only if (1) you are not a “Reporting Individual” (one required to file a Form 1 annual financial disclosure with the Florida Commission on Ethics—Trustees, the President, VPs, Deans, full-time UF lawyers, personnel and business managers, finance and accounting directors, grants coordinators, those with >\$20K purchasing authority)—**and (2) you are not** accepting a gift in connection with a UF procurement or contract **and** you have no involvement in a UF procurement or contract—**then (3) even if you are a “Procurement Employee”** (one with *any* procurement-related duties/role or a P-Card—involving >\$10K in a Fiscal Year, including an authorizing, decision-making, advising/input, developing, assessing, auditing, or any other procurement role), **you may accept a gift of ≤\$100 from a UF vendor or lobbyist; but (4) if also you are not a Procurement Employee, you may accept a gift in any amount.** Ss. 112.3145(1)(b), (c), 112.3148(2)(d),(e), (3), (4); 112.3215(6), Florida Statutes.

However, a gift, gratuity or favor is never permitted to influence/garner good will (or as a quid pro quo) for official action—and is never permitted to UF personnel in connection with a procurement or its contract. These prohibitions apply to all UF personnel, and even if a vendor, lobbyist or other gift-giver is also a personal friend or relative. Also, avoid any actual, potential likely, or appearance of conflicts. When in doubt, pay and do not accept or partake in a gift. S. 112.313(2), (4), Florida Statutes.

College of Medicine.

The College of Medicine has a stringent conflicts of interest and gift policy that relates to gifts from the pharmaceutical, medical device and biotechnology industries. See UF Regulation 5.0764.

See the attached guidance for more specific rules. Further advice is available from the UF General Counsel or Deputy General Counsel at 352-392-1358. All applicable UF Regulations and laws govern (e.g., standards for research). See <http://www.generalcounsel.ufl.edu/>.

More Guidance on Gifts (See Introductory Page For Definition of “Gifts”)

1. Some Key Standards Applying to All UF Personnel

No UF personnel (faculty, staff, officers, and trustees) may (directly or indirectly) solicit or accept, and no spouse or minor child of UF personnel may (directly or indirectly) accept, any gift, gratuity or favor of any kind or value if there is an intent—or actual or potential effect—to influence the UF personnel’s official actions or judgments. (See UF Reg. 1.011; s. 112.313 (2), (4), Florida Statutes.)

- Even without intent to influence a particular decision, intent to create goodwill with someone who can act for UF or recommend UF action—is a kind of intent to influence under the law.

No one may knowingly, give or offer to UF personnel—and no UF personnel may knowingly solicit, accept, or agree to accept—any gain or advantage (for the UF personnel, or anyone in whose welfare s/he is interested), in order “to [wrongfully] influence” the UF personnel in a UF matter. This applies when the giver believes (or the UF personnel represents) that the UF personnel has authority to act for UF or any of its units—even if that authority (in fact) is lacking. See ss. 838.014-016 Florida Statutes.

- This is a bribe or unlawful compensation or reward for official behavior, and need not involve money or an item that has a monetary value.

2. Purchasing Code of Conduct Applying to All UF Personnel

All UF personnel are prohibited to solicit, accept, or agree to accept—and any UF vendor/potential vendor is prohibited to offer to any UF personnel—any *gratuities (including gifts or favors)*, of any value or type in connection with a procurement or contract. See UF Reg. 3.020 (8). This rule applies when a procurement is anticipated, planned or underway—and in maintaining the ongoing business relationship with a vendor and its representatives. **This rule applies even to personal friends who are vendors.**

Also, while a procurement is underway, anyone on the procurement committee and the decision-maker **may not solicit donations to UF or any of its units** from a responding vendor. (To avoid doubt and appearance of conflict, anyone who influences or participates in the procurement also should not solicit donations from involved vendors.) The only exception is if the UF procurement document states that a gift to UF or a UF unit is required or permitted in proposals or negotiations. This is to avoid a donor relationship from influencing a procurement decision. Board of Governors Reg. 18.001(1)(g).

3. Some Key Rules Applying To UF “Reporting Individuals” and “Procurement Employees”

If you are a **“Reporting Individual”** (required to file a Form 1 annual financial disclosure with the Florida Commission on Ethics, including those Procurement Employees with purchasing authority >\$20K), you are prohibited to **solicit or accept**, directly or indirectly—and executive branch lobbyists (including but not limited to vendors and potential vendors and their paid representatives)¹ and the employers and clients of lobbyists/vendors are prohibited to **give you**, directly or indirectly—any *gifts, gratuities, or favors of any amount or type*.² Those **“Procurement Employees”** (UF personnel with procurement-related duties—or a P-Card—involving >\$10,000 in any fiscal year, including an authorizing, decision-making, advising, developing, assessing, auditing, or any other role in such procurement), who are **not** also Reporting Individuals (because they have some role in, but no authority for,

¹ If a vendor or potential vendor merely responds to a UF RFP or ITN, it is not lobbying. But if the vendor/potential vendor proactively seeks business from UF, it is lobbying. Assume registered executive branch lobbyists are lobbying.

² Also, limited exceptions may arguably apply in some circumstances where influence clearly is not sought. For example, water and non-alcoholic beverages and inexpensive, minimal food consumed while working may be necessary to complete UF business and may not be offered to influence official action or garner goodwill. This is distinguished from being taken out or provided a meal before or after a work session, or being provided expensive meals even while working. Meals served to all members of a Board during meetings generally are permitted. Consult the UF General Counsel or Deputy General Counsel.

procurement or their procurement authority is ≤\$20K) are also prohibited to **solicit** gifts of any amount, and are prohibited to **accept** gifts of >\$100, from current and potential lobbyists/vendors, their employers and clients. Soliciting gifts benefiting the spouse, child of any age, parent, or sibling of a Reporting Individual or Procurement Employee is also prohibited. See ss. 112.3215 (1)(d), (6) (**this prohibition against any gift to Reporting Individuals trumps other laws on the subject**); 112.3148(3), (4), (5), Florida Statutes.

Assume that gifts, gratuities and favors are intended to at least create goodwill for UF business, if not to influence particular purchases or policy decisions.

4. Certain Permitted Gifts—Reports on Gifts.

See the introduction page regarding permitted gifts. **A gift, gratuity or favor is never permitted to influence/garner good will (or as a quid pro quo) for official action—and is never permitted in connection with a procurement/contract. When in doubt, pay and don't accept or partake in a gift.**

The gift-giver who is a UF vendor or a lobbyist/principal of a lobbyist must file a report quarterly with the Commission on Ethics about any gift of \$25 to \$100 given to a Procurement Employee or Reporting Individual (other than a relative). S. 112.3148(5)(b). (But for the gift to be permitted, unless it is from UF or a UF DSO, the recipient must not be a Reporting Individual. S. 112.3215(6), Florida Statutes.)

Any Reporting Individual—and any Procurement Employee--must report quarterly to the Commission on Ethics about any gift received and believed to be over \$100—unless given by UF or a DSO, in which event the report is annual. (Gifts of any amount to Reporting Individuals and gifts >\$100 to Procurement Employees from UF vendors, potential vendors and lobbyists are not permitted.) See ss. 112.3148 (3), (4), (5), (6), (8) and 112.3215(6), Florida Statutes. If, within 90 days of receipt of a gift, equal or greater value is provided by the Reporting Individual or Procurement Employee to the gift-giver, there is no gift (and the value of the gift is reduced by any value given to the gift-giver within 90 days). Ss. 112.312(12)(a); 112.3148(8)(a), Florida Statutes.

Reports are not required for gifts from relatives.

See UF Regulation 3.020(8); s. 112.3148(2), (3), (4), (5), (6), (8) and s. 112.3215(6), Florida Statutes.³

Relative is defined in Section 112.312(21): “an individual who is related to a public officer or employee [UF Trustee or employee] as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the public officer or employee or who otherwise holds himself or herself out as or is generally known as the person whom the public officer or employee intends to marry or with whom the public officer or employee intends to form a household, or any other natural person having the same legal residence as the public officer or employee.”

³ The interaction of these sections is complex so please consult the General Counsel or Deputy General Counsel for advice and do not accept or partake in any gift if there is any question about its propriety under UF policy or law.

Excerpts and Summaries of Key UF and Board of Governors Regulations

Nothing of Value To Influence Official Action.

UF Reg. 1.011 states: “No employee shall solicit or accept anything of value that is based upon an understanding that the official action or judgment of the employee would be influenced thereby.”

S. 112.313(2) and (4), Florida Statutes, makes clear: no gift *or other favor* may be requested or accepted by any UF personnel—or be accepted by his or her spouse or minor child—in circumstances where there is an attempt or intent to influence that or any other UF personnel’s official judgments or action.

Purchasing Standard of Conduct.

UF Regulation 3.020(8) states: “It shall be a breach of ethical standards for any employee of the University to accept, solicit, or agree to accept a gratuity *of any kind, form or type* in connection with any contract for commodities or services. It shall also be a breach of ethical standards for any potential contractor to offer an employee of the University a gratuity *of any kind, form or type* to influence the development of a contract or potential contract for commodities or services.”

(Note, that while a gratuity may be pecuniary in nature, it may also be any favor given.)

Gain or Advantage For Official Action Is Bribery. Anyone who knowingly, “gives [or] offers” to UF personnel—and any UF personnel who knowingly “solicits, accepts, or agrees to accept”—any “gain or advantage” (to the UF personnel or to anyone in whose welfare s/he is interested) in order “to [wrongfully] influence [the UF personnel to] perform...any act or omission” that the giver believes is—or that the UF personnel represents to be—within his or her UF authority, is giving a bribe or unlawful reward for official behavior. This is the case, whether or not the UF personnel actually has authority to act for UF in the matter. Ss.838.014-838.016, Florida Statutes.

Purchasing and UF Donations. Board of Governors Reg. 18.001(1)(g) also prohibits any UF or Direct Support Organization employee who is “participating on a procurement selection committee for commodities or services from soliciting donations from responding vendors during the selection process, except for donations or other benefits expressly stated in the procurement document.”

Reporting Individuals. Specified State Employees and State Officers under ss. 112.3145(1)(b) and (c) and 112.3148(2)(d), Florida Statutes, including for state universities, Trustees, the President, VPs, in-house, full-time lawyers, business managers, purchasing agents with authority to make purchases of >\$20,000 (see s. 287.017, Florida Statutes, Category One, which may be amended over time as to the threshold amount), finance and accounting directors, personnel officers, grants coordinators.

Procurement Employees. A Trustee, officer or employee with any procurement-related duties/role—or a P-Card—involving >\$10,000 in a fiscal year, including an authorizing, decision-making, advising/input, developing, assessing, auditing, or any other role in any procurement. See s. 112.3148(2)(e), Florida Statutes. Purchasing agents (those who have authority to make purchases >\$20,000, or the applicable threshold for Category One purchases in s. 287.017, Florida Statutes at the time) are Procurement Employees. But Procurement Employees who do not have any actual procurement authority or whose procurement authority is ≤\$20,000 (or the Category One threshold in s. 287.017 at the time) are not purchasing agents and consequently, unless they are covered for another reason, are not Reporting Individuals.