

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Tuesday, September 04, 2012 10:47 AM
To: Schoolfield, Sanford R. (WASD)
Cc: Gonzalez, Gary (WASD); Brewer-McDuffie, Cecilia (WASD); Centorino, Joseph (COE)
Subject: Gift Policy (INQ 12-154)

Mr. Schoolfield,

In response to your question about the County's gift policy, the County Ethics Code at Sec. 2-11.1 (e) states that a County employee may not—

- **solicit** or **demand** a gift, or
- **accept** or **agree to accept** any gift **in exchange for** taking an official action or performing or not performing a legal duty.

Essentially, Procedure Number 401, # 6, reiterates the Ethics Code. It states that County employees may not accept gifts, favors, services, or anything of value from citizens or organizations **due to their County employment**.

For example, a gift from a long-time friend, which is given based on your friendship and not based on your County employment, is a lawful gift. On the other hand, the Ethics Code prohibits a County employee from accepting a "tip" or a "gift" from a citizen for simply doing his County job. If a citizen wishes to thank a County employee for good service, the citizen is encouraged to write a letter of commendation to the employee's supervisor.

Also, depending on the facts, accepting a gift **in exchange for** doing one's County job or giving preferential treatment to a citizen **because of a gift received or promised** may rise to a criminal offense under state law.

Particularly in the Water & Sewer Department, where many employees interact with the public on a regular basis, **"TIPS" AND SIMILAR "GIFTS" GIVEN IN EXCHANGE FOR DOING ONE'S COUNTY JOB SHOULD BE IMMEDIATELY REFUSED.**

Other examples of legal and prohibited gifts are discussed in ethics opinions RQO 07-28 and RQO 07-61, which can be found at our website at www.miamidadeethics.org.

If you have further questions, do not hesitate to contact me.

Sincerely,

VICTORIA FRIGO, STAFF ATTORNEY

Phone: 305 350-0601

Fax: 305 579-0273



19 West Flagler St., Suite 820
Miami, FL 33130

Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure.

From: Schoolfield, Sanford R. (WASD)
Sent: Friday, August 31, 2012 9:39 AM

To: Ethics (COE)

Cc: Gonzalez, Gary (WASD); Brewer-McDuffie, Cecilia (WASD)

Subject: Clarification Concerning Gifts Policy

Hello,

In the Ethics Phase V class materials it references Section 2-11.1(e)(4) as “all permissible gifts” over \$100 being reportable, see the referenced answer sheet for the quiz question from the class below:

Although some County departments have a “no gift policy,” the County Ethics Code does allow for gifts in very limited situations. All permissible gifts or series of gifts must be reported if their value exceeds:

- a. \$10
- b. \$100**
- c. \$1000
- d. No limit

ANSWER: b

EXPLANATION: Employees and officials who lawfully accept any gift, or series of gifts from any one person or entity, valued at more than \$100 must comply with the disclosure requirements of Section 2-11.1(e)(4) of the Code of Ethics.

The Ethics Code cited says:

(3) *Prohibitions.* A person described in Subsection (b) (1) through (6) shall neither solicit nor demand any gift. It is also unlawful for any person or entity to offer, give, or agree to give to any person included in the term defined in Subsection (b)(1) through (6) or for any person included in the term defined in Subsection (b)(1) through (6) to accept or agree to accept from another person or entity, any gift for or because of:

- (a) An official public action taken or to be taken, or which could be taken;
- (b) A legal duty performed or to be performed, or which could be performed; or
- (c) A legal duty violated or to be violated, or which could be violated by any person included in the term defined in Subsection (b)(1).

However, the attached memo that references Procedure Number 401, policy number 6, seems to say there is a total no gift policy without exceptions. Please provide clarification on this issue.

Thank you for your assistance in this matter,

Sanford Schoolfield, PHR
Water and Sewer Employee Safety and Development Instructor
Miami-Dade Water & Sewer Training Unit
786-552-8679
miamidade.gov
"Delivering Excellence Every Day"

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Tuesday, September 04, 2012 1:12 PM
To: Schoolfield, Sanford R. (WASD)
Cc: Gonzalez, Gary (WASD); Brewer-McDuffie, Cecilia (WASD); Centorino, Joseph (COE); Robles, Silvino A. (WASD); Carcache, Alvaro A. (WASD)
Subject: RE: Gift Policy (INQ 12-154)

Mr. Schoolfield,

I'm sorry that my response was not clear.

A gift is prohibited when given in an attempt to influence a County employee to take an official action or make an official decision. This is the general intent of the Ethics Code and the wording in Procedure Number 401.

Materials handed out in class (particularly when the contract has already been awarded) and *de minimis* gifts such as pens with the company name are not disallowed.

Gifts from County vendors are not strictly prohibited unless prohibited by your department. But the facts should be analyzed carefully before accepting a gift to determine whether an attempt is being made to influence or whether an appearance of impropriety would be created by taking the gift. The Ethics Code establishes a minimum standard of conduct for County employees. Public employees should carefully consider the totality of the circumstances before taking any action that could possibly erode the public's trust.

A new on-line ethics course for County employees is in development and will replace the Ethics Phase V Class materials soon.

VICTORIA FRIGO, STAFF ATTORNEY

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From: Schoolfield, Sanford R. (WASD)
Sent: Tuesday, September 04, 2012 11:52 AM
To: Frigo, Victoria (COE)
Cc: Gonzalez, Gary (WASD); Brewer-McDuffie, Cecilia (WASD); Centorino, Joseph (COE); Robles, Silvino A. (WASD); Carcache, Alvaro A. (WASD)
Subject: RE: Gift Policy (INQ 12-154)

Is the Ethics Phase V class materials going to be revised to reflect this change? Reading Procedure 401 it is an absolute prohibition from any gifts, but in the Ethics Codes and class materials it list exceptions like technical books/manuals, etc. In addition, in the past we were told it was permissible for contractors, with existing contracts, to buy lunch for County employees that they are working with on the project – “contract lunch, no contract no lunch.” Per 401 all of these exceptions are now disallowed. Another example, under the Ethics Code in the past a contractor/vendor with an existing

contract for training may hand out materials in class (in the past this was not seen as influencing future awards because the contract was already awarded), such as pens with their company name on it to ball caps, per 401 this is now disallowed. As I read 401 if supplying note paper and pens for a class was not specifically in the contract then it is disallowed. I do not read 401 as being the same as the Ethics Codes for these reasons – 401 negates all “limited” exceptions, this was my question. We already knew all quid pro quo type of work related exchanges were prohibited, e.g. tips. I see 401 as a significant change in how this policy was implemented in the past – please review the Ethics Phase V Class materials (to include the ppt) provided by your office, it does not “read” the way 401 reads. In my humble opinion we have gone from being too loose to being too tight.

Sanford Schoolfield, PHR

Water and Sewer Employee Safety and Development Instructor

Miami-Dade Water & Sewer Training Unit

786-552-8679

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"Delivering Excellence Every Day"

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