CITY OF TALLAHASSEE
INDEPENDENT ETHICS BOARD

AO 2021-04 – June 15, 2021

MANDATORY ETHICS TRAINING FOR CITY EMPLOYEES § 61, TALLAHASSEE CHARTER

MANDATORY ETHICS TRAINING BY THE INDEPENDENT ETHICS BOARD

To: *Ms. E. Denise Hart, SHRM-CP*
Employee Engagement Coordinator
Human Resources & Workforce Development
City of Tallahassee

SUMMARY:

Pursuant to § 61, TALLAHASSEE CHARTER, the City of Tallahassee Independent Ethics Board shall "manage and coordinate the mandatory training of local officials, officers, employees, and board members in state and local ethics"; however, the charter does not extend this mandate to independent contractors doing business with the City of Tallahassee.

QUESTION 1:

Does the Tallahassee Charter mandate that ethics training be provided to independent contractors employed with the City of Tallahassee?

Under the circumstances presented, the question is answered in the negative.

The inquirer seeks advice on whether independent contractors are required by the Tallahassee Charter to complete ethics training provided by the City of Tallahassee Independent Ethics Board.

The applicable language of the Tallahassee Charter reads as follows:

> "The Ethics Board shall: … manage and coordinate the mandatory training of local officials, officers, ***employees***, and board members in state and local ethics[.]"

§ 61, TALLAHASSEE CHARTER. (2021) *(emphasis added)*.

The plain language of the applicable charter provision shows that the training mandate only applies to those individuals enumerated within the language, and the term "independent contractor" is not included. At this step, the answer would appear to be in the negative. Furthermore, the Tallahassee Charter does not include any definition for the term "employee" to imply that any requirement for employees would extend to independent contractors.

A review of the municipal ordinances also produces no language that would support a finding that the training requirement extends to independent contractor or that an independent contractor would be considered an employee of the city.

The City of Tallahassee Independent Ethics Board is authorized by state law. *See* § 112.326, FLA. STAT. (2020). As this Board's authority is derived from the state ethics code, the question as to whether the state ethics code applies to independent contractors would be persuasive in this pending matter.

The state ethics code explicitly states that it provides an ethical standard of conduct for public officers and public employees. *See* § 112.313, FLA. STAT. (2020). The definitions section of Chapter 112, Part III, FLA. STAT. (2020), as it applies to the state ethics code, does not define the term "employee" or "public employee."[1]

The Florida Commission on Ethics has long opined on the issue, stating that the state ethics code "does not apply to a person whose relationship with a governmental entity is as an 'independent contractor,' rather than as a public officer or employee." CEO 81-61, *citing* CEO 77-60, CEO 77-76, CEO 78-65, CEO 81-48.

In CEO 81-61, an attorney provided legal serves for the City of Lakeland, was recognized as the City Attorney, and maintained an office in City Hall. The attorney, however, also serviced other clients and often outsourced work performed on behalf of the City of Lakeland to other attorneys within his firm. The city maintained a contractual relationship with the law firm, and the attorney was employed by the law firm. Under these circumstances where the individual was an independent contractor, the Florida Commission on Ethics held that he was not an employee and not subject to the state ethics code.

Furthermore, the Florida First District Court of Appeals has previously held that the state ethics code does not cover independent contractors. In *Wright v. State*, a former public school teacher who maintained a contractual relationship with the school district was no longer subject to the state ethics code, because she had surrendered her employee status to become an independent contractor. *See Wright v. State*, 389 So. 2d 662, 663 (Fla. 1st DCA 1980).

In *Wright*, a teacher who had obtained tenure took a leave of absence to become a candidate for school board. Ms. Wright maintained a contractual relationship with the school board, so she had the option to return to the classroom. The state ethics code prohibits an employee from holding an office as a member of the governing board of his or her employer. *See* § 112.313(10), FLA. STAT. (2020). The Florida Commission on Ethics sought to apply the state ethics code to Ms. Wright, but the appellate court reversed and remanded.

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[1] The term "employee" is defined in § 112.3187(3)(b), FLA. STAT. (2020), which is technically within Ch. 112, Part III, Fla. Stat. (2020); however, this definition is strictly limited to Florida's Whistle-bower's Act [§§ 112.3187-112.31895, FLA. STAT. (2020)] and does not extend to the state ethics code.

A point of distinction between CEO 81-61 and *Wright* is that the former case included the governmental entity paying a business entity while the latter applied to an individual. In both cases, the payees were found to be independent contractors and not employees for the purpose of application of the state's ethics code.

QUESTION 2:

If the Tallahassee Charter mandates that ethics training be provided to independent contractors employed with the City of Tallahassee, must the city provide independent contractors with access to the PeopleSoft computer program?

As question 1 was answered in the negative, this question is moot.

ORDERED by the City of Tallahassee Independent Ethics Board meeting in public session on June 15, 2021, and **RENDERED** this 15th day of June, 2021.

APPROVED:

Carlos A. Rey, Chair
Tallahassee Independent Ethics Board

ATTEST:

DWIGHT A. FLOYD
Independent Ethics Officer

APPROVED AS TO FORM:

JOHN LAURANCE REID
Board Counsel