



Agenda

August 4, 2011 – 3:00 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
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Commissioners
Edward Rodgers, Chair
Manuel Farach, Vice Chair
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director
Alan S. Johnson

Staff Counsel
Megan C. Rogers

Administrative Assistant
Gina A. Levesque

Investigator
Mark E. Bannon

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from July 7, 2011
- V. Executive Session (3:15 pm – 4:00 pm)**
 - a. C11-011 b. C11-012 C11-014
- VI. Public Comments
- VII. Form 8b Conflict of Interest Disclosure (Manuel Farach)
- VIII. Applicability of Sec 2-444(5)(g) to uniformed Firefighter and Paramedic extra duty details
- IX. Response letter from the Attorney General's Office Re: Second Request for Advisory Opinion
- X. General Discussion – Public Employee Institutional Discounts
- XI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 11-040 b. RQO 11-042 c. RQO 11-043
 - d. RQO 11-044 e. RQO 11-046 f. RQO 11-048
 - g. RQO 11-058 h. RQO 11-061
- XII. Items Pulled from Consent Agenda
 - a.
- XIII. Proposed Advisory Opinions – Re: Charitable Organizations
 - a. RQO 11-029 (resubmitted) b. RQO 11-039
 - c. RQO 11-041 d. RQO 11-051 e. RQO 11-059
- XIV. Proposed Advisory Opinions
 - a. RQO 11-037 (resubmitted) b. RQO 11-047
 - c. RQO 11-050 d. RQO 11-052 e. RQO 11-053
 - f. RQO 11-055
- XV. Executive Director Comments
- XVI. Public Comments
- XVII. Adjournment

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. CALL TO ORDER: July 7, 2011, at 3:04 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair
Dr. Robin Fiore
Ronald Harbison – Attended via teleconference.
Bruce Reinhart

STAFF:

Mark E. Bannon, COE Investigator
Alan Johnson, Esq., COE Executive Director
Gina Levesque, COE Administrative Assistant
Megan Rogers, COE Staff Attorney
Tim Montiglio, Recording Clerk, Clerk & Comptroller's Office
Julie Burns, Condensing Clerk, Clerk & Comptroller's Office

(CLERK'S NOTE: Item IV. was addressed before item III.)

IV. APPROVAL OF MINUTES FROM MAY 5, 2011, and JUNE 2, 2011.

Commission on Ethics (COE) Executive Director Alan Johnson said that there were 16 corrections adopted to the June 2, 2011, minutes and that the corrections were already made. He added that approval of the May 5, 2011, minutes were tabled at the June 2, 2011, meeting, for corrections to be made, and those minutes were now presented for approval.

(CLERK'S NOTE: For continuation of item IV., see page 2.)

III. INTRODUCTORY REMARKS

Judge Edward Rodgers stated that:

- Ronald Harbison would be attending via teleconference.
- All attendees should turn off or silence their cell phones.

III. – CONTINUED

- Members of the public submitting comment cards to the COE had a three-minute time limit at the podium.
- Comment card topics had to be relevant to the agenda items.

IV. – CONTINUED

MOTION to approve the minutes of the May 5, 2011, and the June 2, 2011, meetings. Motion by Manuel Farach and seconded by Robin Fiore.

UPON POLLING THE COE, the motion carried 5-0.

Mr. Johnson said that the agenda would contain two general public comment sections; items V. and XV., at the start and the end respectively of the meeting.

(CLERK'S NOTE: The numeric order of the agenda was restored.)

V. PUBLIC COMMENT

V.a.

DISCUSSED: Public Comment.

Alexandria Larson said that public comment was an important part of the agenda. She said that the County's elected officers, appointed officials, and administrators, had to consider how the decisions they made could be affected by the events they attended, the issues they supported, the activities in which they participated, and who funded them. She said that public perception was guided by who benefitted the most from their decisions.

Suzanne Squire pointed out that the rules for decorum and behavior in meetings also applied to the COE members. She said that the COE was ignoring public comment and that the COE's mission statement was manipulated to correspond with the COE's actions. She said that County government was designed to support the public; therefore, public comment should be important to the COE.

VI. PUBLIC COMMENT REVISION TO BYLAWS

Mr. Johnson said that:

VI. – CONTINUED

- Staff had submitted a legal analysis for public commentary during meetings.
- Typically, public comments would be heard for quasi-judicial legislative matters related to the public's rights.
- The courts considered public meetings as marketplaces of ideas.
- The courts extended the right to public comment at meetings where there were no statutory requirements for it.
- Executive functions such as discussion of a job applicant's background were not included. The public is invited but cannot comment.
- Staff recommended two opportunities for public comment on the COE agenda, but the COE could allow public comment at their discretion.
- Because of due process concerns, staff recommended that public comment, which could influence COE members, be restricted from complaint hearings.
- Staff recommended adding section X. for public comment into the bylaws that read:

Public comment is permitted on all agenda items with the exception of probable cause proceedings and final hearings involving complaints before the commission. The chairperson shall have the discretion to limit public comment as necessary based upon time, manner, and decorum considerations.

- Decorum or some control over the length and manner of public comments and responses should be shown.

Judge Rodgers said that the COE had been criticized for approving an item before hearing public comment.

Mr. Johnson said that staff recommended following Robert's Rules of Order which specified panel discussion, public comment, and panel vote, in that order.

VI. – CONTINUED

Manuel Farach asked at what point would public comment be heard before a vote or on determining punishment. He said that it was important to hear public comment before making a decision.

Dr. Robin Fiore said that the COE would be listening to the public's point of view. She also said that she disagreed with the use of public comment to determine the correct punishment for violators.

Judge Rodgers agreed that public comment should not be addressed until after an item's decision had been made or a penalty had been determined. He said that the public should not be responsible for making decisions that the COE should have made.

Bruce Reinhart stated that he agreed that the COE was responsible for making decisions and determining punishment. Mr. Harbison added that the COE would then have to listen to public criticism about a decision or punishment.

Mr. Farach said that:

- The COE was a quasi-judicial body that had to instill confidence in the public's operation of government.
- Accessible public input would inspire confidence in the system.
- He understood that the COE should not allow popular opinion to influence a vote.

Dr. Fiore said that unless the public had heard the evidence, their comments would not reasonably contribute to outcomes.

Mr. Johnson reiterated that the probable cause hearings were executive, while final hearings were open to the public.

Judge Rodgers said that the COE was new and that some COE practices would require refinement over time.

MOTION to adopt Section X. as amended to exclude the exclusion or exception of final hearings involving complaints before the COE. Motion by Manuel Farach.

VI. – CONTINUED

MOTION DIED FOR LACK OF A SECOND.

MOTION to adopt item IV. Motion by Dr. Robin Fiore and seconded by Bruce Reinhart.

PUBLIC COMMENT: Suzanne Squire.

Mr. Reinhart commented that he did not represent a county commissioner suspected of corruption.

ADDITIONAL PUBLIC COMMENT: Alexandria Larson.

Judge Rodgers asked whether the public should be solicited for comment on all routine requests for clarification of the Code of Ethics (Code).

Dr. Fiore said that the COE's mandate was to enforce the Code and to address specific issues about the Code that was brought before the COE.

Mr. Johnson clarified that:

- All comments were public comment aside from comment about the original complaints brought before the COE.
- Advisory opinion was a quasi-administrative, quasi-legislative duty of the COE that would be subject to public comment.

UPON POLLING THE COE, the motion carried 4-1. Manuel Farach opposed.

VII. AMENDMENT TO RULES OF PROCEDURE

VII.a. Withdraw an Advisory Opinion Request

Mr. Johnson said that one of the revisions to the Code was the ability to withdraw an advisory opinion request. The provision reflected in section 2.4.F. of the COE's standard procedure was revised to say:

An advisory opinion request may be withdrawn by the submitting party in writing no later than 10 days prior to the public meeting wherein the Commission on Ethics is to consider the request.

VII.a. – CONTINUED

Mr. Johnson said that an advisory opinion request may be withdrawn up to 10 days before its scheduled hearing. He added that the COE's Rules of Procedure were being changed to comply with the County's Code.

Dr. Fiore asked for assurance that advisory opinion requests were not being withdrawn because the COE staff had provided an opinion or given information after interacting with a citizen. She said that staff's interactions should be part of the public record.

Mr. Johnson said that anything the COE staff had documented would be a matter of public record, and that occasionally, the advisory opinion letter would be mailed more than 10 days before the scheduled hearing.

Judge Rodgers said that the individual filing an advisory opinion request should be entitled to withdraw the request.

Dr. Fiore said that within the 10-day window, any activity related to the advisory opinion request should become public record.

Mr. Johnson said that:

- All advisory opinion requests were submitted in writing and became permanent public records.
- The COE encouraged advisory opinion requests.
- To process the advisory opinion request, the COE would ask for information, and depending on the individual's response, could use that information as evidence if any other complaints led to a hearing.
- All advisory opinion requests were assigned to a case file with a permanent Request for Advisory Opinion (RQO) number.
- Withdrawn advisory opinion requests would have their case files stamped as withdrawn.
- Advisory opinion requests that were not fully processed would still remain on file as public record.

Dr. Fiore suggested that advisory opinion requests should not be processed until the tenth day before the scheduled hearing.

VII.a. – CONTINUED

Mr. Johnson suggested adding the following language to the County's Code, section 2.4: All records received by the COE staff, notwithstanding this rule, would be maintained.

Mr. Johnson said that withdrawn advisory requests would not be agenda items because they would not be considered by the COE.

Gina Levesque, COE Administrative Assistant, said that advisory opinion letters were not mailed until they were reviewed and approved by the COE chair.

Mr. Johnson said that the processed advisory opinion letters that were mailed by the COE staff were adopted by the COE from the consent agenda and became official when accepted by the COE.

Dr. Fiore said that because there was no method for addressing her concern, she would withdraw her proposed amendment to the Rules of Procedure.

MOTION to adopt staff's recommendation to amend the Rules of Procedure's section 2.4. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 4-1. Dr. Robin Fiore opposed.

VIII. VENDOR DATABASE UPDATE

Mr. Johnson said that the County's staff had assembled a database of 11,000 vendors.

Public Affairs Director Lisa DeLaRionda in describing the County's registered vendor database application, said that:

- County employees used a dedicated intranet site that included the searchable vendor database.
- The County's home page, www.pbcgov.com, had links to report fraud, report ethics violations, and searches for active registered vendors.
- The search field narrowed choices of registered vendors.

Information Systems Services Application Services Director Archibald Satchell said that:

VIII. – CONTINUED

- A future phase of the database would incorporate vendors into the CGI Advantage Financial System by 2013.
- Vendors would be able to register online and bid for County contracts.
- County employees and other users would see all current and future vendors in real time.

Ms. DeLaRionda added that the COE website would include a link to the vendor database along with the registered lobbyist link.

Mr. Johnson said that:

- The COE would work with the County to incorporate registered municipal vendors onto the database.
- The County Attorney's Office was developing a countywide lobbyist registration ordinance.

Assistant County Attorney Leonard Berger said that:

- The municipal databases would be centrally accessible.
- The current County system would not account for vendors submitting bids until 2013.
- The registration of vendors and lobbyists did not currently apply to the municipalities.

Dr. Fiore suggested that an interactive link enabling employees to report gifts be made accessible on the County's website.

PUBLIC COMMENT: Alexandria Larson.

Mr. Satchell said that Active Vendor Search was currently operational on the County's website.

Mr. Berger said that any vendor or contractor receiving payment from the County would be in the registered vendor database.

VIII. – CONTINUED

Mr. Johnson said that there was a registered lobbyist database available on the County's website.

ADDITIONAL PUBLIC COMMENT: Suzanne Squire.

IX. COMMISSION ON ETHICS SECOND REQUEST FOR ADVISORY OPINION FROM ATTORNEY GENERAL'S OFFICE

Mr. Johnson said that in relation to advisory opinion requests:

- The COE staff had requested information about non-quasi-judicial issues, recusals, and abstentions from the State COE.
- State statute, section 286.012, did not make exception depending on the type of commission.
- The COE staff had also contacted the State's Attorney General (AG), who said that in a due-process type of hearing, the respondent's rights were protected.
 - If there were nonfinancial biases, prejudices, or affinity, a quasi-judicial board member adjudicating the rights of an individual should be able to abstain without violating the State constitution.
 - The opinion returned from the AG did not discriminate between non-quasi-judicial, due-process issues and abstention on legislative or administrative matters.
- Staff recommended requesting a formal advisory opinion from the AG regarding the violation of due process as opposed to violating the statute that a member could abstain only for financial reasons.

Mr. Johnson said that the County COE did not have the latitude to create rules related to nonfinancial abstentions.

Mr. Harbison expressed concern that the COE could abstain itself out of a quorum.

MOTION to authorize sending a letter to the State Attorney General seeking a formal opinion on the due-process issue. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.

RECESS

At 4:29 p.m., the chair declared a recess.

RECONVENE

At 4:42 p.m., the meeting reconvened with Manuel Farach, Dr. Robin Fiore, Bruce Reinhart, and Judge Edward Rodgers present. Ronald Harbison was present via teleconference.

X. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

X.a. RQO 11-032

X.b. RQO 11-036

X.c. RQO 11-045

MOTION to approve the consent agenda. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.

XI. ITEMS PULLED FROM CONSENT AGENDA – None

XII. PROPOSED ADVISORY OPINIONS

XII.a. RQO 11-022 (Revised)

Mr. Johnson said that:

- Assistant Airport Director Martha LaVerghetta inquired whether she should accept airline tickets, accommodations and meals from her husband's employer, Southwest Airlines, (Southwest) to attend a conference.
- Previously, the COE staff had determined that the family flight privileges were a compensatory benefit of her husband's employment, not gifts.
- The COE staff also determined that since Southwest was not a County vendor, accommodations and meals at the conference were not prohibited, but would become reportable gifts if they exceeded \$100.

XII.a. – CONTINUED

- By consulting the Code's statute, section 112.3148(7), the COE's staff determined that when the spouse attended a function hosted by the husband's employer, the function was considered a gift from the husband and, therefore, not reportable.
- The COE staff had processed an advisory letter to Ms. LaVerghetta, which was revised afterwards, and the advisory opinion was resubmitted.

Dr. Fiore said that Ms. LaVerghetta's public employment at the airport had to be considered when determining whether a gift should be reported.

Mr. Johnson said that COE staff had determined that all pilots at the airport and their guests were invited to the Southwest function regardless of their positions as County employees.

Dr. Fiore said that all spouses who were County employees would still have to report attending the function even though it was not a prohibited gift, and that the COE staff had analyzed the situation correctly the first time.

Mr. Farach said that proposed advisory letters contained notices that the requesting party was a County employee.

Mr. Harbison said that all spouses, County employees or not, were entitled to attend functions without having to report them. He said that it was unfair to burden County employees with a compliance requirement that was not applied to other guests.

PUBLIC COMMENTS: Suzanne Squire and Alexandria Larson.

Mr. Johnson said that:

- Inheritance was an exception to the gift law. Unless a vendor had left the inheritance because a person did something to get that inheritance, then it would be a violation of the Code.

XII.a. – CONTINUED

- The proposed advisory opinion letter sent to Ms. Verghetta contained the following statement:

You must be very careful not to use your position as an Assistant Airport Properties Manager to financially benefit your spouse's employer. This provision of the code is important because of your county position, it requires you to have ongoing contact with PBI A lessees AirTran and Southwest. For example, if Southwest or AirTran were to renegotiate their leases at PBI A, any use of your official position or office, any action that you may take or influence you may exert that would financially benefit either airline in a manner not shared with similarly situated members of the general public, would violate the misuse of office section.

- Ms. LaVerghetta could not use her position to provide a financial benefit to her husband's employer, Southwest.
- Staff recommended that Ms. LaVerghetta's acceptance of the airline tickets, accommodations and meals from her husband's employer was within the Code's guidelines.
- Ms. LaVerghetta should not have to recuse herself from negotiating contracts with Southwest or AirTran unless the COE determined otherwise.
- The COE agenda and copies of the proposed advisory opinion letters were provided to the County Administrator's Office.

Mr. Reinhart said that since the COE had rendered an opinion and provided information to Ms. LaVerghetta's management, County administration would be responsible for pursuing further action regarding her duties.

Judge Rodgers said that the COE would not extend an advisory opinion more than necessary in responding to requests for opinion.

Dr. Fiore said that the State's administrative code had not been revised to reflect changes in the workforce population.

XII.a. – CONTINUED

MOTION to approve the original proposed advisory opinion letter sent to Martha LaVerghetta and to regard her as a person of responsibility. Motion by Dr. Robin Fiore, and seconded by Manuel Farach.

Mr. Farach said that he seconded Dr. Fiore's motion because he was concerned about unnecessary reporting requirements for public officials and the micromanaging of County administrators.

Mr. Reinhart verified that the gift was from the husband's employer to the County employee, not a gift from spouse to spouse. Mr. Johnson added that the husband's employer was a lessee of the County, not a vendor, and the gift was not prohibitive.

UPON CALL FOR A VOTE, the motion carried 5-0.

XII.b. RQO 11-027

Mr. Johnson said that a municipal employee asked whether he could use the municipal email system to solicit volunteers for a charity event. He said that the COE staff had recommended that the employee avoid using his official position and municipal resources to financially benefit a charity.

MOTION to adopt RQO 11-027 as drafted by staff. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.

XII.c. RQO 11-028

Mr. Johnson said that:

- A municipal village attorney asked whether employees of the village's golf course could accept tips.
- Tips were contemplated as part of the compensation agreement and documented in the job description.
- The COE staff had recommended that a municipal service employee should not be prohibited from accepting tips and gratuities when they were defined as expected compensation.

MOTION to adopt RQO 11-028 as drafted by staff. Motion by Bruce Reinhart.

(CLERK'S NOTE: The motion was seconded later in the meeting.)

XII.c. – CONTINUED

Mr. Farach said that the tips should be within the normal range expected for the services performed.

Mr. Johnson said that:

- The requested advisory opinion would address only adherence to the gift law.
- Employees providing financial benefit to guests in exchange for accepting tips would violate the “misuse of office” section.

Mr. Farach said that tips could be so out of proportion from normal tips or services rendered that they would not be permissible even if reported. He added that extreme tipping should be mentioned in the advisory opinion letter’s summary.

Mr. Reinhart suggested adding the following language to RQO 11-028:

Where tips and gratuities are an officially contemplated basis for the overall compensation and the gratuity was of a magnitude that was an industry standard or otherwise customary in the context.

Dr. Fiore said that tips were for special services provided beyond what was normally expected, especially in the golf industry, and should not apply to management.

Mr. Harbison said that public golf courses typically do not have caddies and that tipping would be customary and appropriate mostly with bag handlers and wait staff in the restaurant.

Mr. Johnson stated that:

- The gratuity referred to by Mr. Reinhart was neither a contemplated part of the compensation package nor an industry standard or customary in that context, which protected the advisory opinion.
- The advisory opinion would not protect a salaried employee such as the golf course supervisor.

XII.c. – CONTINUED

Mr. Reinhart said that golf professionals were compensated by receiving a percentage of golf cart rental fees since the services they provided would increase the use of golf carts.

Mr. Farach suggested that the last paragraph on page two of the advisory opinion letter, be changed to include the following at the end of the paragraph: Presuming that it is a customary and accepted standard, and it is in excess of \$100, it still had to be reported.

Mr. Johnson said that:

- The third sentence in the fourth paragraph on page two of the advisory opinion letter should be changed to read:

We note that such a gratuity was neither a contemplated part of the employee's compensation package and is an industry standard or otherwise customary in this context.

- Tips were part of compensation. The COE staff did not contemplate tips as being reportable, and golf course employees could or could not include them as part of their compensation.

Dr. Fiore said that if golf course employees did not include tips as part of their compensation, then the tips had to be reported as gifts.

Mr. Harbison said that he agreed with the COE staff's recommendation, and common sense needed to dictate. He added that if someone attempted to use RQO 11-028's advisory opinion to justify some type of abusive transaction, the COE would handle the situation on a singular basis.

Mr. Farach stated that if a caddie or "bag boy" received more than a \$100 tip, that amount should be reportable.

Dr. Fiore stated that she did not object if tips were included in the compensation agreement; if tips were not included in the compensation agreement, then they were considered gifts.

Mr. Farach said that it was sometimes customary to tip the club professional who lined up tee times since some tee times were more desirable than others.

XII.c. – CONTINUED

Mr. Johnson clarified that:

- If a tip was given at a municipal golf course and the COE or the COE staff was informed that it occurred, the tip would be subject to misuse of office because someone used his or her official position for personal gain.
- The COE staff recommended that the advisory opinion letter not be changed or tailored to include a circumstance that could happen and that was contemplated in another area of the County's Code.
- Tips were considered part of an employee's compensation package offered by the municipality; the COE was merely answering that narrow question.

Mr. Farach stated that a normal compensation was considered part of the package; a \$500 tip was not.

Mr. Johnson said that if a city manager said that a billionaire wanted to offer a \$500 tip, as long as there was no misuse of office, who would dictate that that amount was too much. He added that tips were part of the compensation package, and the COE would be on a "slippery slope" by quantifying the tip amount.

Dr. Fiore stated that:

- The proposed advisory opinion letter stated that the Village of North Palm Beach (Village) did not have a standard employment contract with service employees of the country club.
- There was no way to enforce a COE decision, because whatever the Village decided to pay someone, or whatever tips someone received, the Village would just say it was customary.
- If the Village had an employee contract specifying that tips were part of their compensation, the COE could agree that they were not considered gifts. If the Village did not have an employee contract, the COE would not know that tips were part of the compensation package.

Mr. Johnson clarified that tips were described in the employee job description.

XII.c. – CONTINUED

AMENDED MOTION to include the additional language as discussed. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.

XII.d. RQO 11-029

Mr. Johnson stated that a City of West Palm Beach (City) commissioner asked whether, as an elected official, the commissioner could serve on the board of directors of a local nonprofit organization, and if she could continue to fundraise on the organization's behalf. He said that in the Code's June 1, 2011, revision, the COE staff had recommended that:

- The City commissioner may not use her elected office to provide a special financial benefit to a nonprofit organization while serving as the charity's officer or director.
- The Commissioner could not vote or participate in the decision-making process if a matter that specially or financially benefitted the charity came before the City commission.
- When soliciting donations on behalf of the charity, she needed to retain a detailed log of her contacts, including the amounts solicited by her and pledged by donors.
- The log should be submitted to the COE within 30 days of the charitable event; if not associated with an event, within 30 days of the solicitation itself.
- The City commissioner could not solicit a donation in exchange for any special, official consideration as a commissioner.

Mr. Farach questioned whether the proposed advisory opinion letter should include receiving and not just soliciting a donation in excess of \$100.

Mr. Johnson suggested that the third paragraph, fifth line of the letter could read: a record of those solicitations and donations. He added that the Code specifically said, The log contains the amount solicited and the amount pledged.

Mr. Farach said that he supported inserting the language, the amount solicited and the amount pledged.

XII.d. – CONTINUED

Mr. Johnson clarified that the sentence could read, a record of those solicitations and pledges.

Dr. Fiore questioned how a public official, serving on the board of any entity, could fulfill the sentence: You may not use your elected office to give a special financial benefit while serving as an officer or director of a charity. She added that the person was soliciting as a public official and giving a benefit to a particular charity that was not available to all other charities; therefore, the person was using his or her elected official position to give a special financial benefit.

Mr. Farach clarified that the proposed advisory opinion letter needed to follow the Code's ordinance.

Mr. Reinhart stated that, as a City commissioner, she could not vote on any item that benefitted the charity, which was different from saying, I'm a West Palm Beach City commissioner, and I support this charity. I'd appreciate it if you'd consider a donation.

Mr. Johnson read the specific Code provision and the similar language contained in the voting conflicts disclosure that referred to a special financial benefit:

An official or employee shall not use his or her official position or office or take or fail to take any action, or influence others to take or fail to take any action in a manner which he or she knows or should know, with the exercise of reasonable care, will result in a special financial benefit not shared with similarly situated members of the general public.

Mr. Johnson read similar language under the Code's disclosure and voting conflicts:

County and municipal officials shall abstain from voting and not participate in any manner that will result in a special financial benefit.

Mr. Reinhart requested clarification of the proposed advisory opinion letter's sentence that began, In summary, as to how the Code allowed the City commissioner to react.

XII.d. – CONTINUED

Mr. Johnson added that:

- The COE would need to interpret the Code's meaning.
- The COE staff's interpretation was that someone could not take an official action, meaning in his or her official capacity.
- The solicitation language in section 2-443 was simply a carve out for the gift law.
- If the COE believed that the misuse of office applied, then the COE was basically negating the solicitation language; or the City commissioner would need to state a name, without using her position.

Dr. Fiore stated that the conflict would need to be pointed out to public officials. She added that:

- On one hand, a carve out existed under the gift law, but the abusive position clause was still in effect.
- The City commissioner would not benefit by the COE sending out an advisory opinion letter stating that everything was fine when the opposite was true.
- The COE needed to place the complexity of the Code's gift law carve out and the abusive position clause in the advisory opinion letter.

Mr. Johnson responded that if the COE wanted to adopt the interpretation as discussed, he would request additional research because it was not a commonly accepted interpretation of an official act.

Mr. Reinhart stated that the drafting committee's intention was that public officials could use their public office to solicit on a charity's behalf.

Dr. Fiore clarified that the Code's carve out dealt with solicitation, not with serving on a board of directors.

Judge Rodgers commented that the City commissioner could serve on the board as long as she did not use her commissioner's title.

XII.d. – CONTINUED

Mr. Johnson clarified that in the proposed advisory opinion letter, the commissioner could not use her position to financial benefit a nonprofit entity if she was on the board of directors or was an officer.

Mr. Johnson stated that:

- Because the City commissioner was a board of directors' member for the nonprofit organization, it put her in a different position than just a commissioner lending her name to a charitable fundraiser.
- A specific carve out could be added to the proposed advisory opinion letter stating that because another section in the Code applied, the City commissioner could not use her position to specifically financially benefit the nonprofit charity; therefore, her solicitations should exclude her official title while acting as a director.

Mr. Reinhart and Mr. Farach said that they did not believe a specific carve out in the advisory opinion letter could be extrapolated from the Code's language.

Mr. Farach stated that he supported Dr. Fiore's statement that someone should not be able to serve on a board when serving as an elected official.

Mr. Johnson clarified that:

- Before the Code's revision, the COE's prior position was that someone could not solicit directly or indirectly while serving as a public officer.
- The revised Code included a specific carve out that someone may solicit as long as a log of the solicitations was kept.

Mr. Farach suggested informing the City commissioner that no clear answers could be derived from the ordinance's language as written, and the COE could not provide her with any safe harbor.

Mr. Johnson clarified that:

- Previous to the Code's ordinance change or drafting committee's change, the COE's last advisory opinion was that someone could serve on a board, but he or she could not take part in a charitable event or fundraiser as a board of directors' member or as an officer of that charitable event or fundraiser.

XII.d. – CONTINUED

- Debate had previously taken place regarding the public good of fundraising for charities and the loss of funds.

Dr. Fiore questioned why social policy was being discussed because the main point was to preserve public integrity. She added that:

- It was a form of arrogance for the drafting committee to avoid doing narrowly what they were asked to do.
- By not removing the language, You may not use your name or your office to benefit someone else, the COE was now stuck with the conflict until another drafting committee was appointed.
- She had hoped that the COE did not take the alternative approach that every time a commissioner or a public official raised money for an organization, an investigation would take place to determine whether it was a misuse of office.

MOTION to direct staff to rewrite proposed advisory opinion letter RQO 11-029 reflecting the two Code-ordinance conflicts, and to advise the requesting party that the COE could not provide direct guidance or safe harbor regarding the request. Motion by Manuel Farach.

Mr. Farach responded affirmatively to Mr. Johnson's question whether the conflict was in the context of someone who was on a board or was an officer of a charitable organization, since the conflict would not exist if an elected official was not on a board or was not an officer. He added that Mr. Johnson could advise the requesting party that the COE had discussed the issue at length.

MOTION SECONDED by Dr. Robin Fiore.

Mr. Reinhart disclosed that he socially knew the requesting party, City Commissioner Kimberly Mitchell, and that she had long ago discussed the family-zoned project with him.

Mr. Harbison clarified that the COE was discussing a direct solicitation rather than an indirect solicitation by virtue of simply being on a board.

Mr. Johnson responded that direct and indirect solicitation was already the subject matter of another advisory opinion before the Code's revision.

XII.d. – CONTINUED

Mr. Harbison stated that the advisory opinion letter dealt with direct solicitation by the City commissioner.

Mr. Johnson said that:

- The issue more involved the use of the title, commissioner, for solicitation purposes, because under the gift law, regardless of direct or indirect solicitation, a log should be kept if she used her title for the solicitation.
- Regarding the misuse of office, it would be direct or indirect solicitation if the commissioner allowed someone else to use her name.

UPON CALL FOR A VOTE, the motion carried 5-0.

XII.e. RQO 11-030

Mr. Johnson stated that:

- A County department director asked whether a conflict of interest existed if a County employee, who volunteered as an officer/treasurer of a local nonprofit land trust, was involved in matters where the County provided financial assistance to purchasers of foreclosed homes from that nonprofit land trust.
- In some instances, the nonprofit land trust purchased and resold foreclosed properties to the County's subsidized purchasers.
- Although the County employee's official position did not involve actual grant decision making, it required her to initially screen applicants to determine whether applicants were eligible for County financial assistance, including potential clients of the nonprofit land trust, whom she served as a corporate officer.
- The COE staff recommended that there was an inherent conflict of interest between the County employee's duties and her position as an officer and board member of the nonprofit land trust because she was involved in the qualification process.

(CLERK'S NOTE: Mr. Reinhart left the meeting.)

XII.e. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 11-030 as drafted by staff. Motion by Manuel Farach, and seconded by Dr. Robin Fiore.

Mr. Johnson commented that the County department director was in a quandary whether to approve allowing the employee to continue as a volunteer officer/treasurer of the nonprofit land trust while continuing to screen applicants that may include those who applied for the nonprofit land trust.

Commission on Ethics Investigator Mark Bannon clarified that the situation did not involve outside employment because she was a volunteer at the nonprofit land trust.

UPON CALL FOR A VOTE, the motion carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Item XII.g. was presented at this time.)

XII.g. RQO 11-033

Mr. Johnson stated that:

- The City of Lake Worth (Lake Worth) vice-mayor asked whether the remaining funds in her campaign account could be used to pay for a trip to an event held as part of a municipal sister city program.
- The vice-mayor may not use her official position to obtain a special financial benefit or otherwise corruptly misuse her public office as set forth in the Code.
- The COE staff had stated that the vice-mayor's political contributions and how they were used could not be regulated by the COE because they were regulated by State and federal law.

(CLERK'S NOTE: Mr. Reinhart rejoined the meeting, and Mr. Johnson stated that he inadvertently skipped item XII.f.)

PUBLIC COMMENT: Suzanne Squire.

Mr. Harbison stated that it appeared that the COE had no jurisdiction over this matter.

XII.g. – CONTINUED

Dr. Fiore questioned why the proposed advisory opinion letter could not state that the COE had no jurisdiction.

Mr. Farach said that he supported inserting the usual language that stated to the effect, Notwithstanding, if there was a misuse of public position; however, Judge Rodgers commented that the COE would benefit more by stating less in the advisory opinion letter.

Mr. Johnson stated that regardless of the factual scenarios, when people reached out to the COE for an advisory opinion, they were possibly subjecting themselves to unwelcomed public scrutiny, and that was why RQO 11-033 was more expansive. He added that if the COE desired, he could shorten the proposed advisory opinion letter.

Mr. Farach suggested the following change to page 2, the second paragraph, of the proposed advisory opinion: 1) Retain the words, In summary, and 2) Delete the rest of the paragraph and replace it with the next paragraph.

Dr. Fiore suggested that the paragraph could state, The Code of Ethics does not prohibit you from using funds, but...

Mr. Reinhart suggested that the paragraph could state, The Code of Ethics neither authorizes you nor prohibits you from...

Mr. Johnson read the following revised paragraph after the sentence, In summary: based on the information you have submitted, the Code of Ethics neither authorizes nor prohibits you...

Dr. Fiore continued the sentence by adding the words, from using campaign funds, with a period after the word, funds.

Mr. Reinhart suggested adding the words, as described, after the word, funds.

Judge Rodgers stated that using the suggested language would put the COE in a position for the vice-mayor to say, Well, they told me it didn't prohibit it.

Mr. Johnson responded that the proposed advisory opinion letter's language neither prohibited nor authorized.

XII.g. – CONTINUED

Dr. Fiore also suggested removing the sentence that began, As a former candidate, on page 2, the first paragraph, because the COE was not in the business of giving advice that was not contained in the Code.

Mr. Johnson suggested that page 2, the second paragraph, first sentence could state in part, neither prohibits nor authorizes you to use funds disbursed.

Dr. Fiore said that page 2, second paragraph, first sentence, should read in part, funds as described, with a period after the word, described.

Mr. Johnson clarified that the rest of the first sentence on page 2, second paragraph, would be removed after the words, funds as described.

Dr. Fiore stated that the last paragraph on page 2 could remain; and that the last two sentences in the first paragraph, page 2, could be removed since they were an interpretation of Florida Statute 106.141.

MOTION to approve proposed advisory opinion letter RQO 11-033 as amended to include the changes as discussed. Motion by Dr. Robin Fiore, seconded by Bruce Reinhart and carried 5-0.

(CLERK'S NOTE: Item XII.f. was presented at this time.)

XII.f. RQO 11-031-OE

Mr. Johnson stated that:

- The Lake Worth vice-mayor asked whether a conflict of interest existed if she accepted employment with a local college that had contracts with Lake Worth. In the course of employment with the local college, she would provide counseling to small to medium-sized businesses and recruit companies for the college's growth acceleration program. All counseling services were provided without cost to the participating businesses, and college staff positions were funded, in part, by federal grants.
- The Code specifically exempted all government entities from the definition of outside employment; therefore, staff recommended that the college, which was a State facility, was not an outside employer of the commissioner, and the Code's prohibited contractual relationship section did not apply.

XII.f. –CONTINUED

Responding to Dr. Fiore's question whether the position of vice-mayor was a full-time position, Mr. Johnson said that:

- She was an official, and the position was considered a stipend; several municipalities did not pay a stipend for the vice-mayor position.
- Because the services provided by the college were free to the public, businesses advised by the vice-mayor were not customers or clients as defined by the Code.
- As long as the vice-mayor did not use her official position for personal financial benefit or otherwise corruptly use her position inconsistently within the proper performance of her public duties, employment with the college would not violate the Code.

Responding to Dr. Fiore's question whether any of the businesses would be lobbyists or vendors and if so, would that create a problem because the vice-mayor was soliciting them to become sponsors of the college, Mr. Johnson answered that it was not the vice-mayor's job to solicit businesses to become sponsors because the services provided by the college were free.

Dr. Fiore said that the proposed advisory opinion letter referenced that the commissioner would be recruiting small- to medium-sized enterprises for the Small Business Development Center's (SBDC) growth acceleration program.

Commission on Ethics staff counsel Megan Rogers stated that:

- The SBDC enabled business growth throughout the county, and it was not specific to the college.
- The businesses could potentially become future Lake Worth vendors, who would apply for contracts in the customary manner; and the vice-mayor would advise them as she would any other business that asked for her assistance as a government service provided by the college.

Judge Rodgers said that he thought it would embarrass the vice-mayor if she realized that a business' contract application had been disqualified by Lake Worth when she had been paid to teach that business how to obtain a contract.

Ms. Rogers stated that the vice-mayor could decide whether to accept the employment, knowing that such a scenario could result.

XII.f. – CONTINUED

Mr. Reinhart commented that if the situation arose and there was a potential problem under the Code, the COE would address it then.

Mr. Farach said that he was concerned that an elected official, who had some type of jurisdiction or authority over a local school, was given a job with that school.

Mr. Johnson clarified that if the facts were that there was some quid pro quo special financial benefit that she received from the college other than taking the job corruptly, that would violate a different section of the Code. He added that nothing in the facts indicated that there was a corrupt agreement.

Dr. Fiore said that it would be considered corrupt if the vice-mayor had no resume for the job.

Mr. Farach questioned why the vice-mayor was being chosen for the position as opposed to a COE member, for example, and whether the qualification factored into why she was the Lake Worth vice-mayor.

Ms. Rogers clarified that:

- In the early '90s before becoming Lake Worth's vice-mayor, she had worked in the SBDC position for what was then called the Palm Beach Community College.
- Aside from the vice-mayor's elected role, her lifelong profession has been involved in the business community, and she had operated a consulting firm for small businesses.
- The vice-mayor was a certified business analyst for the Palm Beach State College's (PBSC) Small Business Development Center from 2000-2002.
- The certified business analyst position may have changed in the last 10 years, but the title remained the same.
- The vice-mayor's qualification for the SBDC position included a bachelor's degree in business sales and marketing and numerous other qualifications, which she possessed. The preferred qualifications included a master's degree, which the vice-mayor also possessed.

XII.f. – CONTINUED

- Based on the printout provided by the vice-mayor, she believed that the position was publicly advertised.
- She had spoken to the person who made the hiring decision, and at this time, based on facts that were not contained in the COE's file or in the proposed advisory opinion letter, there may be another conflict with the person hiring the vice-mayor for the position.
 - The gentleman involved in the vice-mayor's hiring process did not anticipate any problem with the COE, but the vice-mayor requested an advisory opinion to ensure that she was being transparent.
 - Currently, Lake Worth was involved in a lawsuit with PBSC, along with several other municipalities.
 - Due to the lawsuit and nothing related to the COE, the PBSC's attorneys were concerned with hiring someone who was an elected official for Lake Worth, so the advisory opinion request may be a moot point.

Mr. Farach stated that he was concerned that the vice-mayor would receive the position based on her official position in Lake Worth.

Dr. Fiore commented that the vice-mayor's background would make her suitable for the position. She stated that she supported Mr. Reinhart's position that if a problem arose, the COE could address it, but the COE should not anticipate a problem arising.

Mr. Harbison stated that he also supported Mr. Reinhart's position.

PUBLIC COMMENT: Suzanne Squire.

Dr. Fiore said that there really was no conflict with the vice-mayor advising businesses how to successfully obtain grantors or sponsors, because that was a service provided by the County. She added that misuse of the vice-mayor's office would be an issue, which could only be addressed if that misuse took place.

MOTION to approve proposed advisory opinion letter RQO 11-031-OE as drafted. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 4-1. Manuel Farach opposed.

XII.h. RQO 11-034

Mr. Farach disclosed that the Forbes Company (Forbes) had been one of his clients, and he had performed work for them, although not in the last few years. He added that he could not state that Forbes would not be a client in the foreseeable future.

Mr. Johnson responded that Mr. Farach would then have grounds to recuse himself.

Mr. Farach stated that he would recuse himself from discussing or voting on proposed advisory opinion RQO 11-034, and that after the meeting, he would inquire as to the appropriate forms that should be submitted.

(CLERK'S NOTE: Mr. Farach left the meeting.)

Mr. Johnson stated that:

- The Code adhered to no participation and no vote, but physical presence was permitted.
- A local business person asked whether he or his employer were prohibited from providing complimentary lunches to municipal officials or employees or from inviting them to attend charity events within the municipality.
- The business was not a vendor, and it did not employ lobbyists within the municipality.
- Staff recommended that as long as the business was not a vendor, lobbyist, principal, or employer of a lobbyist of that municipality who sold, leased, or lobbied that municipality, and there was no quid pro quo or special treatment or other privilege obtained by the business or any of its employees in exchange for the lunches or tickets to charitable events, the Code did not prohibit the gifts; however, an individual gift in excess of \$100 should be reported by the official or employee pursuant to the Code or by Florida statute for a State reporting individual.
- The COE would be grappling with the issue of a municipal employee's ability to receive a free lunch.

XII.h. – CONTINUED

Judge Rodgers said that:

- County departments had departmental policies that police officers were advised not to accept free lunches.
- Police officers received the special free lunch benefit because businesses desired their presence as a safety and security factor.
- Permitting police officers to receive the special free-lunch benefit due to their positions was not good departmental policy.

Mr. Johnson said that:

- When training municipalities' staff, he talked about Code compliance and personal integrity or departmental rules.
- Some municipalities and many departments had a zero tolerance for taking anything from a vendor.
- Obviously someone could not pay for the past, present, or future performance of a specific legal duty; but in general terms, a vendor could take an employee to lunch up to an aggregate of \$100, even if it was the employee's department that was being vended by the vendor.

Mr. Reinhart stated that:

- The advisory opinion request stated that the gift was limited to complimentary lunches to employees at monthly meetings to discuss common issues.
- The proposed advisory opinion letter accurately answered the advisory opinion request, which was that Forbes was not a vendor. Forbes was permitted to give the gifts; and Forbes did not have a reporting requirement, although any kind of quid pro quo could not be solicited or accepted.

**MOTION to approve proposed advisory opinion letter RQO 11-034 as drafted.
Motion by Bruce Reinhart and seconded by Ronald Harbison.**

XII.h. – CONTINUED

Mr. Bannon clarified that:

- Forbes' employees were not buying lunches for the various advisory boards on which they served.
- Forbes' employees were members and not directors of the various organizations.
- Forbes would purchase the lunches in conjunction with monthly official public meetings to discuss such issues as growth management and security.

(CLERK'S NOTE: Mr. Farach rejoined the meeting.)

UPON CALL FOR A VOTE, the motion carried 3-1. Judge Edward Rodgers opposed, and Manuel Farach abstained.

(CLERK'S NOTE: Manuel Farach submitted Form 8B, Memorandum of Voting Conflict for County, Municipal, and other Local Public Officers, regarding item XII.h., in compliance with Florida Statute, Section 112.3143.)

XII.i. RQO 11-037

Mr. Johnson stated that:

- The Town of Palm Beach (Town) manager asked whether a prohibited conflict of interest would arise if a Town building official was required to review and give final approval to work completed by his brother, whose company had been hired to perform the work of a resident inspector.
- Resident inspectors were hired by private construction entities to ensure that all work was performed properly and in accordance with the Town's building codes.
- In this particular jurisdiction and municipality, the private residents, who had work performed on their houses, hired their own resident inspectors to "inspect the inspectors."

XII.i. – CONTINUED

- Resident inspectors filed weekly reports with the Town building official. At the conclusion of a project, the Town building official completed a final inspection of the work, and if appropriate and applicable for the project, a certificate of completion or occupancy was issued.
- The COE staff recommended that while there was no prohibited conflict of interest under the Code based solely on a sibling relationship between a municipal employee charged with overseeing the work of a private contractor, the municipal employee may not use his official position to benefit his brother, his brother's company, or the landowner who employed his brother's company, by giving a special financial benefit not shared by similarly situated residents.
- The COE could not opine as to the policy or potential appearances of allowing such a relationship to exist. Notwithstanding, while the relationship itself may not violate the Code per se, the potential appearance of impropriety may necessitate steps by the Town to diminish this potential conflict.
- When the COE staff reviewed the Code, the relationship itself was not the problem, or would not be the problem under the Code. The problem was using the relationship to do something.
- The COE staff was unable to find that the Code would, on its face, state that the sibling relationship was a Code violation, which explained why additional language was added stating that there was a concern.

Dr. Fiore commented that although the issue could turn into a Code problem, it was a management issue, and the COE needed stronger language regarding that situation.

Mr. Reinhart stated that:

- His general position was that the COE should not provide advice to management.
- He was uncomfortable with RQO 11-037's paragraph on page 3, the first sentence, because the COE could not provide an opinion, but on the other hand, the COE, in essence, was suggesting how the issue should be handled.

XII.i. – CONTINUED

- The COE could include appropriate language to the effect:

Although the narrow issue presented does not itself constitute a prohibited conflict under the Code of Ethics, it raises substantial concerns about appearances of impropriety that we recommend be addressed as a management issue.

- The first sentence in the first paragraph on page 3 could be deleted and replaced with a sentence that began with the word, since, or the word, the.
 - The language, the narrow issue presented does not itself constitute a prohibited conflict under the Code of Ethics, could be added after the word, since, or the word, the.
 - The rest of the paragraph could be deleted, and the following language could be added: Nevertheless, it raises a substantial appearance of impropriety, concern, which we recommend be addressed as a management matter.

Mr. Johnson suggested changing the proposed words, it raises, to the words, it could raise, and Mr. Reinhart agreed. He added that the resident inspector was paid privately by the resident to ensure that work performed was to building code.

Mr. Farach said that the term, threshold inspector, was probably more technical under the statute.

Mr. Bannon clarified that by way of ordinance, the resident inspector was required to hold the proper certifications, but the homeowner actually employed the inspector. He added that under the Town's ordinance, that resident inspector must provide certain reports to the Town as the work progressed until the final inspection was performed.

Mr. Reinhart commented that there might be motivation to look the other way if the project was not moving properly.

Mr. Farach said that hiring a resident inspector was a common practice in large, commercial projects. Dr. Fiore said that the resident would certainly pick the resident inspector who was the brother of the Town official, and Mr. Farach agreed.

XII.i. – CONTINUED

Mr. Farach said that:

- At some point there was a violation of the Code's section 2-443, which stated that, An official or employee shall not use his official position or take or fail to take any action.
- He was troubled in balancing section 2-443, which did not yet consider the request to be a violation with Mr. Reinhart's position that it was not the COE's responsibility to manage public officials but to opine on the Code.

Mr. Johnson requested that Mr. Reinhart retain the last sentence in the first paragraph on page 3 regarding the difference between someone who had discretionary powers and someone who did not, and Mr. Reinhart agreed.

Dr. Fiore suggested that the sentence being retained should be placed before the proposed language that began with the word, Nevertheless.

For clarification, Mr. Reinhart read the paragraph's proposed language as follows:

The narrow issue presented does not itself constitute a prohibited conflict under the Code of Ethics; nevertheless, it could raise a substantial appearance of impropriety. This is especially true if the official acts of the building official are of a discretionary nature. We recommend this situation be addressed as a management matter.

Mr. Bannon clarified that:

- The Town building official's brother was not actually a resident inspector himself. He was part of the company of resident inspectors. The company was one of several companies that performed resident inspections in the Town.
- The Town had originally planned to request that the particular company report elsewhere, although it would not have been cost effective because it would have cost the Town more for the company to furnish resident inspectors.
- The company's position was that their client wanted to hire them, but if the Town was going to charge the company more to perform the resident inspections, that cost would carry over to the client.

XII.i. – CONTINUED

- Resident inspectors were privately hired, they were required to only hold state certification in the inspection field, and they were paid an hourly rate; therefore, they could earn more money by not passing a project's inspection.
- The company was owned by the brother of the Town's building inspector director, who signed off on the company's certificates.
- He believed that the Town manager had planned to have the resident inspector's reports signed off by a different building official, who was the building inspector director's supervisor.

Judge Rodgers questioned whether faulty work would be performed because of some collusion between the parties, which would then affect the Town's taxpayers.

Mr. Farach expressed his concern with the Town's building official not taking steps to reflect that his brother's company received no better or worse benefit than anyone else. He added that:

- The way that section 2-443 was written, in this particular case, it was incumbent on the Town's building official to take that affirmative step.
- The language on page 2, last paragraph, of the proposed advisory opinion where it began, so long as, started to address his concern.
- He was cognizant that the COE did not want to micromanage the building officials or anyone else. If there was an ordinance violation, the COE should discuss it; if not, the COE should say there was no violation.

Mr. Johnson clarified Mr. Farach's concern that there may have been complicity on the public employee's part.

Mr. Farach responded that it was also the "turning of a blind eye" to the fact that the Town business official's brother could approach customers by saying, By the way, my brother is head of the building department.

XII.i. – CONTINUED

Mr. Johnson said that the Code was written in such a way that it prohibited the official from using or failing to use his official position or office. The Code did not contemplate preventing a third party from using or failing to use his or her official position or office without the complicity or the assistance of the Town's building official.

Mr. Farach stated that he disagreed because if the public official knew that someone was doing something to give a special, financial benefit to members of his family and the public official did not stop that action, he believed it was a violation of section 2-443.

Dr. Fiore suggested the language, The use of the relationship to promote a financial benefit is prohibited.

Mr. Farach said that not only was section 2-443 prohibitory, it also required affirmative action if the public official learned that someone was violating the ordinance.

Dr. Fiore commented that the proposed advisory opinion could state that it was a violation of the Code to use a public official's name to obtain a benefit by anyone.

Mr. Johnson clarified that:

- The Code did not contain language to that effect.
- He did not see how a Code violation existed if someone was not doing something that he or she would not do for everyone else in the same situation.
- Someone could never use their official position with a wrongful intent, or some act or omission that was inconsistent with the proper performance of his or her public duties.
- The COE could recommend that the public official be vigilant in not allowing someone to use his or her name, but if the public official did allow that to occur, it would not violate the Code unless there was some nexus between the public official allowing someone to do it. For instance, someone could not be prevented from taking out an advertisement.

XII.i. – CONTINUED

Mr. Farach stated that:

- At some point, the line would be crossed if someone used a public official's name several times as opposed to using it once.
- If someone used a public official's name once and the public official did nothing to stop that use, he did not see that there was a violation. If an advertisement ran 12 times and the public official took no steps to prevent it from running, there would be an issue with section 2-443.

Mr. Reinhart commented that:

- The COE was really being asked to provide an opinion on the Town building official's conduct.
- The question was whether the building official's failure to police his own brother's conduct, a failure to act, could, under a certain hypothetical, rise to a violation; and he agreed with Mr. Farach that it could.

Mr. Johnson and Mr. Farach suggested adding the following proposed advisory opinion language:

You should take great care not to allow your familial relationships to give others the misimpression that there is a special relationship, which can lead to a financial benefit.

Dr. Fiore said that RQO 11-037 stated on page 3, first paragraph, that the relationship was not prohibited, but it would be a matter of management policy to avoid any appearance of impropriety.

Mr. Johnson suggested adding the language to page 3, first paragraph, management as well as the official himself to avoid, or adding the language, it would be incumbent upon the official as well as management to avoid that appearance of impropriety, as opposed to being specific about some act.

Dr. Fiore commented that the COE had been stuck on RQO 11-037's summary without reading the summary's second paragraph.

Mr. Reinhart clarified that part of RQO 11-037's summary had already been rewritten earlier in the discussion.

XII.i. – CONTINUED

Dr. Fiore said that the summary's second paragraph stated what the COE had, for the most part, wished to convey.

Mr. Johnson responded that he did not believe that RQO 11-037 had a timeframe.

MOTION to table item XII.i. until August to allow staff further time to research and possibly recirculate another advisory opinion draft letter. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.

Mr. Johnson recommended that the original advisory opinion letter be distributed before the next meeting, along with a draft with the suggested revisions.

XII.j. RQO 11-038

Mr. Johnson stated that:

- A Town of Jupiter (Jupiter) councilman asked whether being employed by a publicly regulated utility presented an inherent conflict of interest when customers of the utility appeared before Jupiter's council in most, if not all, decision-making matters.
- Based upon a franchise agreement with Jupiter, all businesses and residential property owners within Jupiter who used electrical power supply devices purchased those services from the councilman's outside employer, Florida Power & Light (FPL).
- The public utility had similar, if not identical, contracts with the County and most County municipalities.
- Staff recommended that because all residents and businesses that appeared before Jupiter's council were required to purchase their power from the councilman's outside employer, a regulated public utility, all persons and entities were similarly situated; and there was no inherent conflict merely because a person or entity was a customer or client of that utility.
- Additionally, the public utility was the sole source of electric supply within Jupiter, therefore, the councilman's employment with the public utility would not constitute a prohibited, contractual relationship under the sole source exception to the prohibition.

XII.j. – CONTINUED

- Notwithstanding, the councilman must be careful not to use his official position to obtain a special, financial benefit for himself or his outside employer.
- He believed that the proposed advisory opinion letter stated that there could be customers or clients that were not the usual customers or clients, and those customers or clients would then be in a position where they could specially and financially benefit under the Code.
- The councilman abstained from any issues that arose regarding FPL.

MOTION to approve proposed advisory opinion letter RQO 11-038 as drafted by staff. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.

XIII. NATIONAL ASSOCIATION OF COUNTIES ACHIEVEMENT AWARD

Mr. Johnson stated that:

- On July 17, 2011, the National Association of Counties would present its achievement award to the County for enactment of innovative, sweeping ethics reform measures.
- The ethics reform measures covered the ethics initiative to the Board of County Commissioners' adoption of the initial Code, the establishment of the COE, and the hiring of an inspector general.
- The award would be presented in Multnomah County, Portland, Oregon.

Judge Rodgers suggested that if a County representative was unable to be present, a personal representative could be hired to report to the COE.

Mr. Johnson said that:

- The award was for the County and its entire ethics reform process.
- He would recommend to Assistant County Administrator Bradley Merriman or to Legislative Affairs Director Todd Bonlarron that they contact friends who would be present to ensure that pictures were taken and to provide some feedback.

XIII. – CONTINUED

- The County had released a press release on June 29, 2011, and had sent the information to all press outlets.
- The information would soon be placed on the COE’s current events website page.

XIV. EXECUTIVE DIRECTOR COMMENTS – None

XV. PUBLIC COMMENTS

XV.a.

DISCUSSED: Respect for the COE.

League of Cities Executive Director Richard Radcliffe stated that he had new-found respect for how the COE agonized to do the right thing, and when people said, “corruption county,” everyone should now say, “Ethically innovated county.”

There should be a level playing field in government, and no one should be allowed to strong-arm anyone, Mr. Radcliffe said. He added that it was wrong for someone to solicit and advertise by using their name, but if the opinion letter’s language was too broad every single charity, nonprofit, or hospital board in the county would need to destroy their letterhead.

Judge Rodgers read the following comment card submitted by Suzanne Squire:

Please use the bylaw mission statement everywhere on everything; the one on website is nothing close to real one, guardian public trust.

XVI. ADJOURNMENT

At 7:14 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Manuel Farach, hereby disclose that on July 7th, 2011:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

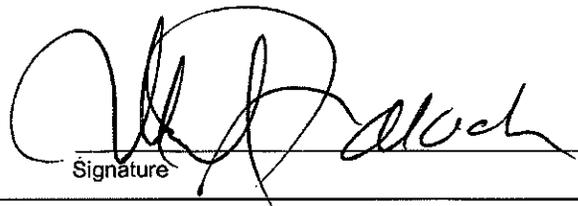
(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

I do not currently represent The Forbes Company, but have done so in the past. Although I have no current plans to do so, there is a possibility I may be retained as an attorney to represent it in the future on some matters. Accordingly and in an abundance of caution, I abstained from any vote on July 7th Agenda item XII.h., i.e., RQO 11-034, a request for opinion brought before the C.O.E. at the request of The Forbes Company.

Date Filed

July 8th, 2011

Signature



NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

VIII - APPLICABILITY OF § 2-444(5)(G) TO UNIFORMED FIREFIGHTER AND PARAMEDIC EXTRA DUTY DETAILS

STAFF ANALYSIS:

At issue is whether the official law enforcement overtime or extra duty detail provision waiving the required submission of part-time outside employment conflict of interest forms extends to similar uniformed extra duty details performed by county and municipal fire rescue employees.

Uniformed Fire Rescue personnel perform uniformed extra duty details at public and private events. These details are either contracted or administered by the applicable county or municipal fire rescue department and records are maintained by the departments in a manner similar to those administered by police agencies. According to Palm Beach County Fire Chief Martin DeLoach, these extra duty details are provided “in a similar fashion, often working side-by-side with our law enforcement partners.”

LEGAL ANALYSIS:

The following appellate cases grant broad latitude to an administrative body in the interpretation given a legislative enactment. Legislative intent and public policy considerations are appropriate and a literal interpretation is not required “when to do so would lead to an unreasonable conclusion or defeat legislative intent *or result in a manifest incongruity.*” *Las Olas Tower Company, infra.*

Rotemi Realty, Inc. v. Act Realty Company, Inc., 911 So2d 1181 (Fla. 2005)

Interpreting the state statute barring contingency agreements prohibiting lobbyists from receiving fees contingent on executive branch action, the Florida Supreme Court interpreted the statute as to not include real estate commissions contingent on the sale of property. The court asserted that the issue was whether the common practice of paying real estate commissions contingent on consummation of the sale violated public policy when applied to a purchase or sale by the government. “We doubt that that legislature intended for restrictions on the occupation of lobbying to cover the separately regulated profession of real estate brokerage. We therefore conclude that the restriction on contingency fees under section 112.3217 does not apply to real estate brokers acting in the ordinary course of their profession, as these brokers were.” Previously, the sc held that as a general rule, contingency fee contracts involving government procurement violate public policy only if shown to involve “favours or corrupt means” *Roberts & Co. v. Mortland, 33 So.2d 732 (Fla. 1948).*

Las Olas Tower Company v. City of Ft. Lauderdale, 742 So.2d 308 (4th DCA 1999)

Reviewing court will defer to an interpretation given a statute or ordinance by the agency responsible for its administration. The issue involved interpretation of a set-back requirement made by a municipal Board of Adjustment (BOA) for the Planning and Zoning Board (PZA) relating to a building application under review. In interpreting original and amended ordinances the court took legislative intent into consideration in applying the revised statute. “In statutory construction a literal interpretation need not be given the language used when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.”

STAFF RECOMMENDATION:

The intent of the drafting committee was to exclude uniformed extra duty details from the part-time employment waiver process. Although only referring to police agencies, both public policy and the intent of the committee would be served by not excluding firefighter and emergency uniformed details as there is no difference in the nature and manner of administering these contracts. Interpreting the code to extend the exemption to fire-rescue uniformed extra duty details would not violate public policy and would be consistent with the intent and reasonable application of the code of ethics. Therefore, staff recommends the COE adopt a broad interpretation of §2-444(5)(g) to include uniformed firefighter and paramedic extra duty details similarly administered or contracted by their government agency.

**IX - RESPONSE LETTER FROM THE ATTORNEY GENERAL
RE: SECOND REQUEST**

Pursuant to the request of this commission, staff submitted a second request for advisory opinion to the Office of Attorney General regarding conflict of interest abstention/disqualification in due process matters involving bias, prejudice or affinity and not otherwise involving financial conflict of interest.

STAFF ANALYSIS:

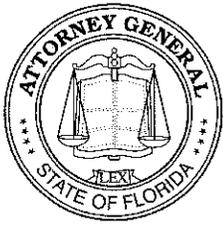
Although the Office of Attorney General declined to issue a formal opinion, Senior Assistant Attorney General Gerry Hammond referred to §120.665, Florida Statutes, which makes provision for the disqualification under the Administrative Procedure Act as follows:

- (1) Notwithstanding the provisions of §112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.

The statute goes on to make provision for the appointment of alternates in the event of a disqualification.

Therefore, any instance of bias, prejudice or conflict of interest alleged can result in the disqualification of a commissioner, provided the Respondent requests the disqualification. In that way, the due process rights of an individual accused of a violation are protected.

However, the opinion of the Florida COE and AG remain that in all other instances, absent a financial conflict, commissioners may not abstain from voting.



STATE OF FLORIDA

PAM BONDI
ATTORNEY GENERAL

PL 01 The Capitol
Tallahassee, Florida 32399-1050
Telephone (850) 245-0158
Fax (850) 922-3969

July 20, 2011

Mr. Edward Rodgers
Chairman, Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Dear Mr. Rodgers:

On May 6, 2011, you requested our assistance in determining whether a member of a local commission on ethics who is present at a meeting of the board may abstain from voting on a measure to avoid creating an appearance of impropriety. This office responded to you in an Informal Attorney General Opinion dated June 9, 2011. By letter of July 11th, you again requested that this office issue a formal opinion on your question.

As you were advised in our earlier response, this office is limited by section 16.01(3), Florida Statutes, to providing legal opinions on questions of state law. Thus, the discussion in the Informal Attorney General Opinion was based on an examination of statutes and case law involving section 286.012, Florida Statutes. This office has no authority to comment on the procedures established by local ordinance for the conduct of meetings or hearings of the Palm Beach County Commission on Ethics. As was suggested in our earlier response, you may wish to discuss your concerns with the county attorney or the attorney who advises the Palm Beach County Commission on Ethics who can more fully explore any procedures established in the ordinance or charter provision creating the commission and describing its procedures.

However, In an effort to provide you with additional assistance, I would note that section 120.665, Florida Statutes, a section of Florida's Administrative Procedures Act, makes provision for the disqualification of agency personnel as follows:

- (1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a

Mr. Edward Rodgers
Page Two

reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

Thus, the Florida Statutes make provision for the disqualification of an individual who is serving in an administrative agency proceeding when bias, prejudice, or interest is shown. The statute provides a procedure for establishing just cause for disqualification and makes provision for filling the seat of the disqualified individual so that business may continue to be conducted by the board or agency. I am enclosing a copy of section 120.665, Florida Statutes, with the annotations of cases construing this statute for your consideration.

The Palm Beach County Commission on Ethics may wish to consult with its attorney to determine whether adopting a rule making substantially the same provision for conducting the business of the commission is appropriate. I am also advised that various the model rules of administrative procedure may contain similar provisions and the attorney for the commission may wish to research and provide to the commission several such disqualification provisions in order that the commission may tailor a rule of conduct to suit its particular needs.

I trust that these informal comments may be helpful to you in addressing your concerns.

Sincerely,



Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosure: s. 120.665, Fla. Stat. Annot.

Notes of Decisions

Construction and application 1

1. Construction and application

Public Service Commission did not violate this section which prohibited ex parte communication with hearing officer or agency head after receipt of recommended order by allowing

staff members to make recommendation at hearing on electric utility's petition to continue utility's continued use of modified conservation cost recovery methodology, where no hearing officer was involved in proceedings and communications complained of were made at public hearing. *Citizens of State of Fla. v. Wilson*, 569 So.2d 1268 (1990). Administrative Law And Procedure ⇨ 314; Electricity ⇨ 11.3(6)

120.665. Disqualification of agency personnel

(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

Laws 1974, c. 74-310, § 1; Laws 1978, c. 78-425, § 12; Laws 1983, c. 83-329, § 2; Laws 1995, c. 95-147, § 767; Fla.St.1995, § 120.71. Renumbered as 120.665 and amended by Laws 1996, c. 96-159, § 34, eff. Oct. 1, 1996.

Historical and Statutory Notes

Amendment Notes:

Laws 1996, c. 96-159, § 34, eff. Oct. 1, 1996, renumbered § 120.71 as this section; and rewrote the section, which formerly read:

"(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual holds the position by appointment, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an

elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute to serve in the matter from which the individual is disqualified.

"(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

"(3) The Administration Commission shall adopt rules of procedure to implement this section."

Law Review and Journal Commentaries

Beyond ex parte communications. Mary F. Smallwood, 61 Fla.B.J. 45 (Oct. 1987).

Library References

Administrative Law and Procedure ⇨314.

Westlaw Topic No. 15A.

§ 120.665

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C.J.S. Public Administrative Law and Procedure §§ 125 to 129, 264 to 266.

Research References

Encyclopedias

- Making Motion for Disqualification, FL Jur. 2d Administrative Law § 277.
- Appointment of Substitute, FL Jur. 2d Administrative Law § 279.

The Commissioners, FL Jur. 2d Public Service Commission § 29.

The Commissioners--Punishment of Commissioners for Ethical Violations, FL Jur. 2d Public Service Commission § 31.

Notes of Decisions

- Action by unqualified members 6
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- Grounds for disqualification 8, 9
 - In general 8
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- Mandamus 13
- Orders 12
- Sufficiency of motions 11
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1. Construction and application

In proceeding to determine whether judicial or quasi-judicial officer has exceeded jurisdiction of office by denying clearly valid motion for disqualification, District Court of Appeal does not decide disputed issues of fact, but assumes, as must agency head, that all allegations of fact in motion for disqualification are true. *Bay Bank & Trust Co. v. Lewis*, App. 1 Dist., 634 So.2d 672 (1994). Administrative Law And Procedure ☞ 749

Alleged interest that commissioners of Public Service Commission had in proceeding contesting validity of 15 percent surcharge imposed by city upon nonresident electric utility customers due to impact that their decision might have on their utility bills was too remote, uncertain and speculative to require recusal of commissioners from proceeding, since any decision concerning surcharge would not guarantee financial benefit to commissioners. *City of Tallahassee v. Florida Public Service Com'n*, 441 So.2d 620 (1983). Electricity ☞ 11.3(6)

Standard to be used in disqualifying individual serving as agency head is same as standard used in disqualifying judge. *City of Tallahassee v. Florida Public Service Com'n*, 441 So.2d 620 (1983). Administrative Law And Procedure ☞ 314

2. Construction of prior law

Terms of Administrative Procedure Act § 120.09 (repealed) concerning recusal were particularly inapplicable to city commissions and it was not to be applied or construed to govern legislative deliberations of city commissions. *City of Opa Locka v. State ex rel. Tepper*, App. 3 Dist., 257 So.2d 100 (1972). Municipal Corporations ☞ 94

Administrative Procedure Act is appropriate in providing minimum standards for disqualification of county board of public instruction members when charged with bias or prejudice. *State ex rel. Allen v. Board of Public Instruction of Broward County*, App. 4 Dist., 214 So.2d 7 (1968), certiorari discharged 219 So.2d 430. Schools ☞ 147.31

3. Due process

Mere fact that hearing officer presiding over hearing relating to dismissal of tenured guidance counselor at community college was member of the college's board of trustees did not render the proceedings violative of due process. *Burney v. Polk Community College*, C.A.11 (Fla.)1984, 728 F.2d 1374. Constitutional Law ☞ 4223(6)

4. Agencies

Within purview of former § 120.09 (see, now, this section) prescribing grounds for disqualification of members of any commission, authority, administrative body or government agency existing under the laws of Florida, county school board was a government or state agency and was thus subject to that section. *Board of Public Instruction of Broward County v. State ex rel. Allen*, 219 So.2d 430 (1969). Schools ☞ 48(2)

5. De facto officers

Substitute beverage director who neither took oath of office nor received valid commission conveying on him authority to discharge duties of office was without authority or jurisdiction to hear and dispose of case against beverage licensee, and licensee could challenge validity of order as against contention that substitute bev-

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erage director was a de facto public officer whose official acts were not subject to attack. *Treasure, Inc. v. State Beverage Department*, App. 3 Dist., 239 So.2d 528 (1970).

Acts of a de facto officer are valid as to third persons and the public until title to such office is adjudicated insufficient, and such officer's authority may not be collaterally attacked or inquired into by affected third parties. *Treasure, Inc. v. State Beverage Department*, App. 3 Dist., 239 So.2d 528 (1970).

When party to be affected by an official's act or decision holds actual knowledge that such official might not in fact legally occupy the office, and when the party makes timely and direct attack on the authority and jurisdiction of the person attempting to exercise the powers of the office, such party is not precluded from inquiring into validity of officer's acts. *Treasure, Inc. v. State Beverage Department*, App. 3 Dist., 239 So.2d 528 (1970).

6. Action by unqualified members

Career service commission erred when, with unqualified member of commission sitting, and although it found that state agency was right in its findings of fact leading to discharge of employees, it reduced penalty from dismissal to 30 days', suspension and directed that employees be reinstated with full back pay and restoration of all rights. *State Dept. of Health and Rehabilitative Services, Division of Mental Health v. Career Service Commission, Division of Personnel, Dept. of Administration*, App. 1 Dist., 315 So.2d 18 (1975), certiorari denied 330 So.2d 15. *Officers And Public Employees* ⇨ 72.33(2); *Officers And Public Employees* ⇨ 76

Under city charter providing that city manager appointed by commission shall be removed by resolution adopted by at least a majority of all commission members only after public hearing in which all charges against manager shall be made and he be given adequate opportunity to answer such charges, although three commission members who had allegedly predetermined to vote for passage of resolution removing city manager from office refused to recuse themselves, city manager was not denied due process and a fair and impartial tribunal. *City of Opa Locka v. State ex rel. Tepper*, App. 3 Dist., 257 So.2d 100 (1972). *Constitutional Law* ⇨ 4172(6); *Municipal Corporations* ⇨ 159(2)

7. Appointment by governor

Under former § 120.09 an appointment by the governor of a substitute to serve in the stead of a disqualified member of a board or commission is not required to be confirmed by the senate, even though the original appointment of the disqualified member by the governor was

required to be so confirmed. *Op.Atty.Gen.*, 073-218, June 19, 1973.

Where school district members, under Const. Art. 9, § 4, were for any cause or reason disqualified, within the purview and intention of former § 120.09 from performing the functions required of them under said section, substitute or replacement members were to be selected and appointed in accordance with subsec. (2) of said section, unless it appeared to the governor that experienced judicial officers were necessary for a proper disposition of the case, which necessity should appear from the governor's order making the selection an appointment. *Op.Atty.Gen.*, 069-56, July 31, 1969.

8. Grounds for disqualification—In general

Deletion of phrase "or other causes for which a judge may be recused," from statute governing recusal of judges and quasi-judicial officers required court to assume that statute was intended to have different meaning after its amendment; thus, although moving party might still disqualify agency head upon proper showing of just cause, standards for disqualifying agency head differed from standards for disqualifying judge, recognizing fact that agency heads have significantly different functions and duties than judges. *Bay Bank & Trust Co. v. Lewis*, App. 1 Dist., 634 So.2d 672 (1994). *Administrative Law And Procedure* ⇨ 314; *Judges* ⇨ 39

Closeness in time between bank directors' cessation of campaign support for State Comptroller and Department of Banking and Finance's commencement of regulatory proceeding against directors, without more, was too tenuous and speculative to require disqualification of Comptroller from presiding over evidentiary hearings on Department's complaints. *Bay Bank & Trust Co. v. Lewis*, App. 1 Dist., 634 So.2d 672 (1994). *Administrative Law And Procedure* ⇨ 314; *Banks And Banking* ⇨ 17

Bank directors' suit against State Comptroller in federal court was not valid reason to require disqualification of Comptroller in evidentiary hearings arising out of complaints filed by Department of Banking and Finance against directors. *Bay Bank & Trust Co. v. Lewis*, App. 1 Dist., 634 So.2d 672 (1994). *Administrative Law And Procedure* ⇨ 314; *Banks And Banking* ⇨ 17

Actions by bank directors and their attorneys in support of efforts to obtain impeachment of State Comptroller or to change his office to appointed one were not grounds for disqualification of Comptroller in evidentiary hearing involving complaints filed by Department of Banking and Finance against directors, where such actions were not raised in motion as ground for disqualification. *Bay Bank & Trust*

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Note 8

Co. v. Lewis, App. 1 Dist., 634 So.2d 672 (1994). Administrative Law And Procedure ☞ 314; Banks And Banking ☞ 17

That agency head necessarily served as investigator, prosecutor, and adjudicator in disciplinary proceedings did not violate due process and was not adequate ground to disqualify agency head. Bay Bank & Trust Co. v. Lewis, App. 1 Dist., 634 So.2d 672 (1994). Administrative Law And Procedure ☞ 445; Constitutional Law ☞ 4045

9. — Bias and prejudice, grounds for disqualification

To determine whether disqualification of an agency head from a proceeding for bias, prejudice, or interest is appropriate, the court must determine whether facts alleged would prompt a reasonably prudent person to fear that they would not obtain a fair and impartial hearing; it is not a question of how the agency head actually feels, but what feeling resides in the movant's mind and the basis for such feeling. Charlotte County v. IMC-Phosphates Co., App. 1 Dist., 824 So.2d 298 (2002). Administrative Law And Procedure ☞ 314

In determination of whether disqualification of an agency head from a proceeding for bias, prejudice, or interest is appropriate, the agency head may not pass on the truth of the allegations of fact, and countervailing evidence is not admissible. Charlotte County v. IMC-Phosphates Co., App. 1 Dist., 824 So.2d 298 (2002). Administrative Law And Procedure ☞ 314

An agency head may serve investigative, prosecutorial, and adjudicative roles in the same dispute, and this blending of roles does not, in and of itself, create an unconstitutional risk of bias. Charlotte County v. IMC-Phosphates Co., App. 1 Dist., 824 So.2d 298 (2002). Administrative Law And Procedure ☞ 314; Administrative Law And Procedure ☞ 445

In any motion to recuse the head of an administrative agency, the practical recognition of the numerous roles played by the agency as well as the agency head, i.e. investigator, prosecutor, adjudicator, and political spokesman, must be weighed against a reasonable fear on the part of the movant that it will not receive a fair and impartial hearing. Charlotte County v. IMC-Phosphates Co., App. 1 Dist., 824 So.2d 298 (2002). Administrative Law And Procedure ☞ 314; Administrative Law And Procedure ☞ 445

Following ALJ recommendation that permit be issued to allow certain mining activities, public statement issued by secretary of Department of Environmental Protection (DEP), stating the secretary's belief as to the appropriateness of the issuance of the permit, could lead a reasonable person to conclude that he would not re-

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ceive a fair and impartial hearing in secretary's forthcoming review of ALJ recommendation, and thus disqualification of secretary from proceedings was warranted; statements were issued on the same day that ALJ issued recommended order, and statements went to the very questions that would be resolved in considering exceptions and issuing a final order. Charlotte County v. IMC-Phosphates Co., App. 1 Dist., 824 So.2d 298 (2002). Administrative Law And Procedure ☞ 314; Mines And Minerals ☞ 92.16

Hearing officer was disqualified from presiding over formal administrative proceeding before regional transportation authorities by various statements she made, which objectively demonstrated bias and prejudice against one party and by her attempt to refute charge of partiality. World Transp., Inc. v. Central Florida Regional Transp., App. 5 Dist., 641 So.2d 913 (1994). Administrative Law And Procedure ☞ 314; Automobiles ☞ 83

Allegations of vindictive and selective prosecution against State Comptroller were insufficient to require Comptroller's disqualification in evidentiary hearings on complaints filed by Department of Banking and Finance against bank directors. Bay Bank & Trust Co. v. Lewis, App. 1 Dist., 634 So.2d 672 (1994). Administrative Law And Procedure ☞ 314; Banks And Banking ☞ 17

Members of county board of public instruction could not themselves determine their fitness to make determination in connection with discharge of teachers who were allegedly absent from their duties without leave on one or more days, but rather where sufficient affidavits of bias and prejudice were filed, board could not proceed until members, who were shown to be biased, recused themselves. State ex rel. Allen v. Board of Public Instruction of Broward County, App. 4 Dist., 214 So.2d 7 (1968), certiorari discharged. 219 So.2d 430. Schools ☞ 147.31

Correct method of seeking disqualification of deputy industrial commissioner, whether appointed or elected, is by filing affidavit of prejudice and if deputy refuses to recuse himself to seek appropriate review before full commission and the Supreme Court. Bieleley v. Brown, App. 3 Dist., 168 So.2d 552 (1964). Workers' Compensation ☞ 1082

10. Timeliness of motions

Motion to disqualify State Comptroller from presiding over evidentiary hearing on complaints filed by Comptroller seeking to remove directors of bank and to prohibit them from serving in similar capacity in other Florida-regulated financial institutions was timely, even though filed eight and ten months, respectively,

ADMINISTRATIVE Ch. 12

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after two petitions for formal hearings were filed; "agency proceeding," for purposes of rule requiring motion for disqualification to be filed within reasonable time prior to agency proceeding, was not defined by statute or rule, and court was unwilling to conclude that "agency proceeding" commenced upon filing of petition for evidentiary hearing. *Bay Bank & Trust Co. v. Lewis*, App. 1 Dist., 634 So.2d 672 (1994). Administrative Law And Procedure ☞ 314; Banks And Banking ☞ 17

11. Sufficiency of motions

Motion for disqualification of State Comptroller in evidentiary hearings involving complaints filed against bank to remove directors of bank and prohibit directors from serving in similar capacity in other Florida-regulated financial institutions should have attached to it all documents relied on to support allegations, rather than informally incorporating by reference lengthy appendix to memorandum of law filed with Division of Administrative Hearing (DOAH) officer in connection with motion to compel discovery. *Bay Bank & Trust Co. v. Lewis*, App. 1 Dist., 634 So.2d 672 (1994). Ad-

ministrative Law And Procedure ☞ 314; Banks And Banking ☞ 17

12. Orders

When agency head testifies to material fact in administrative hearing, review of hearing officer's proposed order should be undertaken by neutral, disinterested third party appointed from outside department. *Ridgewood Properties, Inc. v. Department of Community Affairs*, 562 So.2d 322 (1990). Administrative Law And Procedure ☞ 314

Entry of an emergency order by agency head did not form basis for disqualification from entry of final order. *Lash, Inc. v. State, Dept. of Business Regulation*, App. 3 Dist., 411 So.2d 276 (1982). Administrative Law And Procedure ☞ 489.1

13. Mandamus

If agency does not act on motion for disqualification of agency head within reasonable time, movant's proper remedy would be to seek petition for writ of mandamus. *Bay Bank & Trust Co. v. Lewis*, App. 1 Dist., 634 So.2d 672 (1994). Administrative Law And Procedure ☞ 314; Mandamus ☞ 76

120.68. Judicial review

(1) A party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under s. 120.56, the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(b) When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by stipulation of the parties to the appellate proceedings. In determining whether to transfer a proceeding, the court may consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM

To: Alan Johnson, Executive Director
From: Megan Rogers, Staff Counsel
Date: 7/25/2011
Re: Institutional Discounts

For the purposes of gift disclosure, the Florida Code of Ethics defines “gifts” to include discounts not available to similarly situated persons. §112.312(12)(a)5, Florida Statutes, specifically excludes from the definition of gift “a government rate available to all other similarly situated government employees or officials” :

*§112.312(12)(a)5. A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex or national origin.*¹

The state code of ethics was revised to include §112.312(12)5 in 1992. However, prior to this revision the Florida Commission on Ethics opined that where a discount is equally available to all persons associated with an industry, group or organization, and is provided to an employee or official in the ordinary course of business, the discount is offered without the intent of improperly influencing official action or obtaining the goodwill of an agency official or employee.²

Most recently in CEO 06-18, the COE determined that under the lobbyist expenditure restrictions contained in §112.3215(6)(a), Florida Department of Revenue employees were not prohibited from accepting discounted telephone services from a carrier who lobbies the executive branch, where the discount was not directed to Department of Revenue employees, but to all government employees nationwide.³ In its opinion, the COE noted that it would view the situation differently if the discount was available to a select group of individuals or if an individual received a special discount not available to another similarly situated employee.⁴

¹ CEO 92-26 (discounted car services provided by a school district vocational program was not a gift to public school teachers, under the language of §112.312(12)5, so long as all teachers in the district received the same discount)

² CEO 88-42 (EMT’s and paramedics did not violate the code where they received discounts at local restaurants based upon their official position, where there was no relationship between the employee’s official duties and the businesses providing the discount). CEO 89-31 (Port officials eligible for discounted rates as members of the travel industry could accept discounts from cruise lines regulated by their port so long as the discount was not based on preferred treatment or a special rate unique to their office)

³ See also, CEO 77-11 (city employees may accept free checking accounts from a bank that contracts with their city, the accounts were a “gesture of goodwill” intended to encourage employees to do business with the bank in their private capacities, as evidenced by the bank having made similar offers to other groups, including local teachers)

⁴ See also, CEO 89-31 should an individual use or attempt to use their official position to obtain an additional discount or a discount not available to other members, including preferential treatment or rates, such use of position would constitute a violation of the code (misuse of office).

X - DISCUSSION OF PUBLIC EMPLOYEE VENDOR DISCOUNTS

At issue is whether public employees and officials may receive vendor discounts that exceed \$100 annually in the aggregate.

STAFF ANALYSIS:

The COE has determined that non vendors may offer discounted rates to public employees so long as there is not a quid pro quo or an exchange for the past, present or future performance or non-performance of a legal duty or official action. The issue of whether a similar discount by a vendor of a public entity may exceed \$100 in the annual aggregate has not yet been addressed. This question has been raised at municipal training sessions. Staff has recommended the question be submitted as a request for advisory opinion. Because this is an issue of far reaching consequence, staff is submitting the issue for general discussion.

Examples of vendor discounts are AT&T, Holiday Inn, Duffy's Restaurants, and other corporate discounts that include all state, county and municipal employees (or similarly situated types of employees). In addition, there may be local vendors, such as restaurants, or other small businesses that maintain a discount for public employees of a single jurisdiction.

Attached is a brief legal memo describing the manner in which the Florida Commission on Ethics has dealt with the issue of public employee discounts. In 1992, the Florida Legislature excluded *a government rate available to all other similarly situated government employees or officials* from the definition of gift as it pertained to financial disclosure required by law. Prior to 1992, the Florida Commission on Ethics had already opined that so long as the employee does not use his or her official position to obtain a discount and the discount was not based upon preferential treatment, general discounts for similarly situated public employees was found not to violate state ethics rules. In a 2006 opinion, the Florida COE found that public employees were not prohibited from accepting discounted telephone services, where the discount was not directed to their specific department, but to all government employees nationwide. (opinion attached). This opinion interprets state lobbyist gift prohibitions which do not contain a specific "government rate" exemption as does the gift reporting section.

STAFF RECOMMENDATION:

That the COE consider adopting a similar interpretation as in CEO 06-18, exempting public employee discounts from the prohibition applicable to vendors, provided they are not based on preferred treatment of the vendor by the employee, apply to all other similarly situated government employees or officials, and are not otherwise offered as a quid pro quo, or in exchange for the past, present or future performance or non-performance of a legal duty or official public action.

CEO 06-18 -- October 25, 2006

EXECUTIVE BRANCH LOBBYING**DISCOUNTED CELLULAR TELEPHONE SERVICE OFFERED TO DEPARTMENT OF REVENUE EMPLOYEES BY COMPANY WHOSE LOBBYISTS ARE REGISTERED TO LOBBY THE EXECUTIVE BRANCH**

To: Mr. J. Bruce Hoffmann, General Counsel, Florida Department of Revenue (Tallahassee)

SUMMARY:

Under the specific circumstances presented, Section 112.3215(6)(a), Florida Statutes, does not prohibit Executive Branch agency officials and employees who file financial disclosure from receiving discounted phone service from a cellular telephone company that is the principal of lobbyists who lobby the Executive Branch. The definition of "expenditure" in Section 112.3215(1)(d), Florida Statutes, does not include discounted rates made in the ordinary course of business to such a large group as all government employees.

QUESTION:

Would the prohibition against accepting any expenditure be violated were a "reporting individual" with the Department of Revenue to accept the offer of discounted cellular telephone services, where the cellular telephone company that is the principal of Executive Branch lobbyists offers the same discounted service to all government employees?

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

As General Counsel for the Florida Department of Revenue, you seek this opinion on behalf of your agency's employees. You explain that a cellular telephone company which is the principal of Executive Branch lobbyists sent a flyer to some of the Department's offices, offering a 15% discount off its regular prices for government employees. The discount offer was not directed to just Department of Revenue employees, we are advised, but is available to all government employees, nationwide. You ask whether the Department's employees who file financial disclosure may accept the offer of discounted rates without violating the law prohibiting the acceptance of lobbying expenditures in Section 112.3215 (6)(a), Florida Statutes.

Section 112.3125(6)(a), Florida Statutes, as amended by Chapter 2005-359, Laws of Florida, provides:

Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure.

Section 112.3215(1)(d), Florida Statutes, as amended by Chapters 2005-359 and 2006-275, Laws of Florida, defines "expenditure" to mean

a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term 'expenditure' does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

The definition of "lobbies" in Section 112.3215(1)(f), Florida Statutes, means

Seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. . . .

Although discounted cellular telephone service is, indisputably, a thing of value, we do not believe that under the facts presented here it was offered with either an intent to influence an agency decision in the area of policy or procurement or in an attempt to obtain the goodwill of an agency official or employee. In the situation before us, we are dealing with discounted cellular telephone service offered by a cellular provider in the ordinary course of business to all government employees nationwide without regard for whether the customer is a Department of Revenue employee who files financial disclosure. Although we would view the situation differently if the discount were communicated to only a select group of reporting individuals or if a reporting individual was singled out to receive a special discount that was not available to anyone else, such was not the case here.

Accordingly, we find that agency officials and employees of the Department of Revenue may accept the offer of discounted cellular telephone service without violating Section 112.3215(6)(a), Florida Statutes.

ORDERED by the State of Florida Commission on Ethics meeting in public session on October 20, 2006 and **RENDERED** this 25th day of October, 2006.

Norm M. Ostrau, Chairman

XI – STAFF SYNOPSIS OF PROCESSED ADVISORY OPINIONS (CONSENT AGENDA):

RQO 11-040 Frank Babin

A Delray Beach employee asked whether he may accept dinner on two consecutive nights purchased by two different vendors of Delray Beach while at a conference and whether the code of ethics distinguishes between a vendor that provides goods or services to an employee's department as opposed to a vendor that has no nexus to an employee's position or department.

The code of ethics does not distinguish between vendors and departments within a governmental entity. An employee may not accept anything of value as a quid pro quo or in exchange for the past, present or future performance of their job. Otherwise, employees may accept up to \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist. While accepting these gifts may not violate the code per se, the Commission opined that an appearance of impropriety may exist where an employee who recommends vendors to the City Commission and City management accepts gifts of any value from those vendors, regardless of the fact that the employee may not be the ultimate decision maker.

RQO 11-042 Mike Shuey

A Greenacres' employee asked whether his part-time employment and his spouse's full-time employment with Publix created a prohibited conflict of interest where his public employment required him to purchase items on behalf of his municipality from Publix. First, the Code of Ethics prohibits employees and officials from using their public position to give their outside employer or their spouse's outside employer a financial benefit. Therefore, the municipal employee may not use his official position to benefit his outside employer and/or his spouse's employer by purchasing their goods or services. Second, because he works in a department that transacts business with his outside employer, he is not eligible for a part-time employment waiver and may not maintain both employments without violating the Contractual relationship section of the code. Because Publix is not a sole source provider within the municipality, the employee could purchase these items from another store which would avoid the conflict of interest, and if so, he may then be eligible for a part-time employment waiver.

RQO 11-043 Edward Lowery

The Director of the Palm Beach County Housing and Community Development Department asked whether a conflict of interest exists where a non-profit recipient of community redevelopment and emergency shelter grant dollars leases two properties from its executive director. The COE has jurisdiction over public employees, officials and advisory board members throughout Palm Beach County; however, that jurisdiction does not extend to officers or directors of charitable organizations. The COE cannot opine on matters that involve individuals and transactions that do not come within its jurisdiction.

RQO 11-044 Glenn O’Cleary

A county employee asked whether co-workers may agree to switch shifts and in return, may one employee provide additional financial compensation directly to their co-worker for working a midnight shift as compared to her regularly scheduled evening shift. So long as an employee does not use his or her official position to influence their co-worker in a manner “inconsistent with the proper performance” of his or her public duties, there is no prohibition within the Code of Ethics preventing co-workers from switching shifts. The COE cannot opine as to internal county or department procedure regarding such a shift change arrangement.

RQO 11-046 Darlene Kostrub

The Chief Executive Officer for the Literacy Coalition of Palm Beach County, a registered non-profit corporation, asked whether the Coalition, who is a vendor of West Palm Beach and Boynton Beach, could continue to host its annual Mayors’ Literacy Luncheon. There are exceptions to the gift law limitations as they relate to “public events, appearances or ceremonies” which involve a “ticket, pass, or admission” furnished by a nonprofit sponsor organization. Here, because this event is not open to the public and tickets are only distributed to public officials and staff, this gift law exception is not applicable. The Coalition is not prohibited from hosting the luncheon, however, as a vendor of West Palm Beach and Boynton Beach, it may not give, nor may an official or employee from those municipalities accept, tickets valued at more than \$100.

RQO 11-048 Shelley Vana

A Palm Beach County Commissioner asked whether she could accept an award for civic achievement and attend the associated awards luncheon. The sponsor of the event, a non-profit association, does not employ lobbyists in Palm Beach County. While two non-profit co-sponsors of the event are vendors of the county, attendance at the event is free and the value of the luncheon is less than \$100. Accordingly, consideration of the gift in the context of the gift law prohibitions is not required. The definition of “gift” specifically excludes awards for professional and civic achievement. As such, the commissioner is not prohibited from accepting a civic achievement award and attending the associated awards luncheon.

RQO 11-058 Tammy Fields

A County attorney asked whether county employees, if otherwise eligible, could receive purchase-assistance or rehabilitation mortgages from a County program funded by the United States Department of Housing and Urban Development. The code of ethics prohibits county employees from using their public position to give themselves a special financial benefit. Similarly, County employees may not enter into contracts for goods or services with the County unless the facts and circumstances of the transaction come within an exception to this prohibition. The code of ethics specifically excludes situations where employees receive and contract for the same benefit as eligible members of the

general public. Therefore, so long as an employee follows all procedures required of the general public and does not use their position in any way to obtain a special financial benefit, employees are eligible to receive mortgage or grant funding from the government they serve.

RQO 11-061 JoAnn Forsythe

A municipal employee from Tequesta asked whether her department could attend a symposium sponsored by a vendor, where admission was free to attendees and lunch was valued at less than \$30 per person. Tequesta employees are attending the symposium in accordance with their duties and job responsibilities and may attend the event so long as the cost per person does not exceed \$100 and is not accepted as a quid pro quo for official action or in exchange for the past, present or future performance or non-performance of a legal duty or an official public act.



Palm Beach County Commission on Ethics

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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

July 25, 2011

Frank Babin, Risk Manager
City of Delray Beach
100 N.W. 1st avenue
Delray Beach, Florida 33444

Re: RQO 11-040
Gift Law

Dear Mr. Babin,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your emails of June 17, 2011 and July 22, whether you could accept meals of less than \$100 from a vendor of Delray Beach and whether the code distinguishes between a vendor that you have significant contact with in your official capacity as opposed to a vendor having no nexus with your position or authority.

IN SUM, you may not accept a gift of any value, including meals, from any person or entity as a kickback, bribe or "tip" for doing your job. You may not accept more than \$100 annually, in the aggregate from a vendor, lobbyist, or principal or employer of a lobbyist of Delray Beach. Gifts exceeding \$100 from vendors, lobbyists, principals and employers of lobbyists, who are not relatives, or are not otherwise exempted as gifts, are not reportable because they are absolutely prohibited.

THE FACTS as we understand them are as follows you are the Risk Manager for the City of Delray Beach (the City) and you will be attending the Annual Florida Risk and Insurance Management seminar (FRIM) in Naples, Florida August 2-6, 2011. You have been invited to dinner on August 3 and August 4 by two vendors of the city. These dinners are not a part of the conference and you did not solicit, nor did anyone on your behalf solicit these invitations to dinner. While you recommend vendors to the Delray Beach City Commission and city management, you do not have final decision-making authority. A Delray Beach City ordinance prohibits employees from accepting any gift that may influence their official action.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics, which took effect on June 1, 2011:

Sec. 2-444 Gift Law.

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or

business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

- (2) No lobbyist, vendor or principal or employer of a lobbyist that lobbies the county or a municipality shall knowingly give, directly, or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality. For the purposes of this subsection 2-444(a)(2), the term vendor also includes any person or entity that, because of the nature of their business, may respond to an invitation to bid, request for proposal or other procurement opportunity that has been published by the county or municipality.

First, whether or not an employee has final decision-making authority has no effect on the applicability of the restrictions of the gift law. If you are an employee of the City the gift law restrictions apply even if the vendor or lobbyist does not sell, lease or lobby your department. Second, you have stated that these dinner invitations do not involve a *quid pro quo*. That being said, you are not prohibited from accepting dinner from a vendor of the City, so long as the amount of the dinner does not exceed \$100 and over the course of the calendar year, you do not accept additional gifts from that vendor totaling, *in the aggregate*, more than \$100. You may never *accept or solicit anything of value* from a vendor, lobbyist, principal or employer of a lobbyist in exchange for the past, present or future performance of your job.

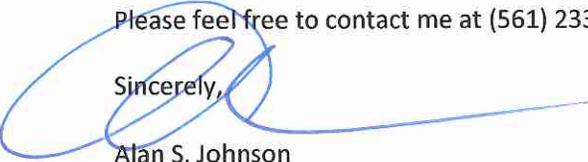
The City may have procedures that are more restrictive than the county code of ethics or may contain different language than the county-wide ordinance. While the Commission on Ethics will enforce violations of the county code of ethics, responsibility for interpretation and enforcement of City policy or ordinance remains with the City.

IN SUMMARY, based on the information you provided you are not prohibited from attending dinners with vendors of your public employer on August 3 and 4, so long as you do not accept anything of any value in exchange for the past, present or future performance of your job. You may not accept more than \$100 dollars in the aggregate over the course of a calendar year from a vendor, lobbyist, principal or employer of a lobbyist. The code of ethics does not distinguish between vendors and departments within a governmental entity. This Commission cannot opine as to whether accepting gifts from vendors violates any City ordinance or departmental regulation. The Commission is concerned, however, that under the facts and circumstances you submit, there is an appearance of impropriety in accepting gifts of any value from vendors who you will potentially recommend to the City Commission and City management, regardless of the fact that you may not be the ultimate decision-maker.¹

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,


Alan S. Johnson
Executive Director
ASJ/mr/gal

¹ RQO 11-037 ("This is especially true if the official acts...are of a discretionary nature.")



Palm Beach County Commission on Ethics

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Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

July 25, 2011

Mr. Mike Shuey, Parks Supervisor
City of Greenacres
5800 Melaleuca Lane
Greenacres, Florida 33463

Re: RQO 11-042
Contractual Relationships/Misuse of Office

Dear Mr. Shuey,

Your request for an advisory opinion from the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows.

YOU ASKED in your email dated June 22, 2011, whether your part-time employment and your spouse's full-time employment with Publix, a vendor of Greenacres, creates a prohibited conflict of interest under the code of ethics where your public employment requires you to purchase items on behalf of Greenacres and the items are purchased from Publix.

IN SUM, based on the facts you have submitted, you may not use your public position to give a special financial benefit to your outside employer or your spouse's outside employer. Therefore, you are prohibited from overseeing or participating in transactions between your outside employer or your wife's outside employer and Greenacres. Regarding part-time employment with Publix, unless the facts and circumstances of the transactions come within an exception to the section 2-443(d) *Contractual relationships*, you may not maintain both your public and private employment without violating this section of the code.

THE FACTS you submitted are as follows.

You are the parks Supervisor for the City of Greenacres (Greenacres) and work part-time at a Publix grocery store. Your wife works for Publix full time and staffs the customer service desk. In your official position as parks supervisor, from time to time you purchase supplies for city functions from Publix using Greenacres' city credit card. These transactions exceed \$500 per year. As a government entity, Greenacres does not pay tax on its purchases and as such, you make all Greenacres tax-exempt purchases from Publix at the customer service desk where your wife works.

COE staff has determined that there are several grocery stores within Greenacres, including Winn Dixie, Target and Walmart, as well as a number of pharmacies and convenience stores.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Sec. 2-443. Prohibited conduct.

(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

(4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;

(d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, *or the official or employee's outside employer or business.* (emphasis added)

Sec. 2-443(a) prohibits you from using your official position with Greenacres in any way to give a special financial benefit to your outside employer or your spouse's outside employer, in this case Publix. A special financial benefit is anything of value that is not shared with similarly situated members of the general public. For example, a Publix receives a special financial benefit when you choose to purchase goods from Publix, as compared to another local grocery store, while you or your spouse work for Publix.

Sec. 2-443(d) prohibits you and your outside employer from entering into contracts or other transactions for goods or services with the municipality you serve. In your case, you work for both Publix and Greenacres. Maintaining Greenacres contracts or other transactions with Publix while you are employed by both would violate this section of the code. There are several exceptions to the contractual relationships provision of the code which might apply to your situation, including contracts or transactions totaling less than \$500 per calendar year, a sole source exception where the outside employer is the sole source of the goods or services within the municipality and a part-time employment waiver.

Over the course of the year, you purchase more than \$500 worth of supplies from Publix and there are several grocery stores within Greenacres' city limits, so neither the \$500 exception nor the sole source exception apply. Even if an exception did apply, you could not personally be involved in the transactions if they gave a special financial benefit to Publix, as previously discussed. While a part-time employment waiver is available in many cases, the waiver requirements include the following:

Sec. 2-443(e) Exceptions and waiver.

- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable, provided that:
- a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and

- b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable, and
- c. The employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
- d. The employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
- e. The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and
- f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists.

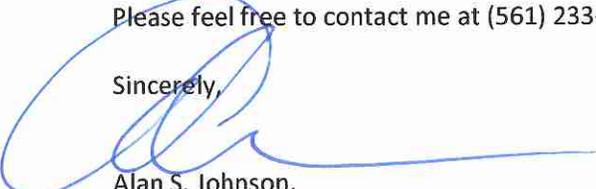
There is no indication, based on the facts and circumstances you have submitted that you have complied with subsections e. and f. above, and obtained either merit rule approval or a conflict of interest waiver from Greenacres. Nonetheless, based on the fact that you work at Publix, subsections a. and d. and possibly b. and c. would prevent your being able to obtain a waiver under this provision.

IN SUMMARY, based on the information you have provided, you may not use your official position to give your outside employer or your spouse's outside employer a special financial benefit. Furthermore, because you work part-time for Publix and you work in the Greenacres department that transacts business with Publix as well as the fact that you are involved in the transactions personally, you may not maintain both employments without violating the Contractual relationships section of the code. If your department eliminates transactions with your outside employer, while the violation may be cured, you will still need to comply with subsections e. and f. above and obtain the appropriate waiver from Greenacres.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/mr/gal



Palm Beach County Commission on Ethics

Commissioners

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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

July 18, 2011

Mr. Edward Lowery, Director
PBC Housing and Community Development
100 Australian Ave., 5th Floor
West Palm Beach, FL 33406

Re: RQO 11-043
Conflict of Interest/Misuse of Office

Dear Mr. Lowery,

Your request for advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your memorandum of June 20, 2011 whether the Executive Director of a charitable organization, receiving federal funds administered through a county department, had a conflict of interest if he obtained a personal financial benefit through a rental property used by the applicant of the charitable funding. Additional information was obtained orally on July 18, 2011.

IN SUM, The Commission on Ethics (COE) does not have jurisdiction over employees, officers or directors of a charitable organization in regards to conflicts of interest. Both the Conflict of Interest and Misuse of Office sections of the Code of Ethics pertain to Public Officials and Employees only. While the COE cannot opine as to the facts and circumstances involving the Executive Director of a private charitable organization, we understand that there is a process whereby the transaction will be scrutinized under state and federal law.

THE FACTS as we understand them are as follows:

You are the Director of the Palm Beach County Housing and Community Development Department (HCD). HCD is a recipient of funding from the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) and the Emergency Shelter Grant (ESG) Programs. In March 2001, HCD published a Notice of Funding Availability (NOFA) inviting eligible participants to seek funding under the programs. As a result, Faith-Hope-Love-Charity, Inc. (FHLC), a 501(c)(3) charitable organization, submitted applications to the program.

FHCL, through its Stand Down House Program, provides housing and support services to homeless veterans who have been displaced due to post traumatic stress disorder, mental illness, substance abuse, and physical limitations. Stand Down House offers a multi-tiered program designed to relieve homelessness and hunger experienced by veterans who have been discharged from the VA Medical Center. FHCL requested CDBG funding for emergency housing and support services. It also requested

funding from the ESG Program for the operation and maintenance of the emergency shelter including cost of insurance, utilities, general maintenance and food. The agency has been operating for 16 years and has received CDBG funding for the Stand Down House facility for 4 years and ESG funding for 8 years.

The funding applications were determined to be eligible and considered for funding by the CDBG Selection Committee and ESG Advisory Board. Subsequent to the initial review of applications, it was discovered with the FHCL financial statements that the agency rents two of its residential homes used in its non-profit operations from the agency's Executive Director, Roy Foster.

The CDBG Selection Committee provisionally approved funding of \$22,400 for the salary of a Resident Technician and the ESGP Advisory Board recommended funding of \$25,000 for the operation and maintenance requests. Both funding recommendations were conditioned on the clarification of the potential conflict of interest.

Federal law addresses conflicts of interest and allows HUD to grant an exception to a conflict providing that it concludes that "the exception will serve to further the purpose of the Act and the effective and efficient administration of the recipient's program or project." As part of the HUD process in considering conflict waivers, HCD must provide documentation to HUD including an opinion of the recipient's attorney that the interest for which the exception is sought would not violate state or local law. The attorney for the grant recipient would be the County Attorney. The County Attorney's office opined that the recently adopted county ethics ordinances required the COE address the issue prior to the County Attorney.

THE LEGAL BASIS for this opinion rests in the jurisdiction conveyed to the Palm Beach County Commission on Ethics through the Commission on Ethics and Code of Ethics ordinances. Misuse of public office or employment, corrupt misuse of office, disclosure of voting conflicts and contractual relationships all apply solely to officials or employees. The definition of "official or employee" can be found in section 2-442:

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function...The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi-judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

The Executive Director of FHCL is not an employee or official as defined by the Code of Ethics. While there are sections of the code that expand the COE jurisdiction to vendors (gift law, noninterference, contingency fees, honesty in applications, etc.) none of the sections include prohibited conduct involving potential conflicts of interest. Therefore, there is no provision for this body to opine as to the facts and circumstances underlying the issues regarding a non-profit employee, director or officer's potential economic conflict in a transaction with the county involving federal HUD funding.

IN SUMMARY, the COE cannot opine as to matters that involve individuals and transactions that do not come within its jurisdiction. Notwithstanding, since there are procedures in place under state and federal law, this issue needs to be addressed within those appropriate forums.

Please feel free to contact me at (561) 233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/gal



Palm Beach County Commission on Ethics

Commissioners

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Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

July 15, 2011

Glenn O'Cleary
Palm Beach County Department of Airports
PBIA Communications Center
1000 Turnage Blvd.
West Palm Beach, FL 33406

Re: RQO 11-044
Prohibited conduct

Dear Mr. O'Cleary,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion. The opinion rendered is as follows.

YOU ASKED in your email dated June 27, 2011, whether it violates the Palm Beach County Code of Ethics for you and a co-worker to agree to switch work shifts, where you agree to provide additional financial compensation directly to the co-worker for working a scheduled midnight shift (11:00 p.m. to 7:00 a.m.) for you, while you work her regularly scheduled evening shift (3:00 p.m. to 11:00 p.m.). Additional information concerning this proposed shift swap was obtained in a telephone conversation with COE staff.

IN SUM, provided that you do not use your official position to influence your co-worker in a manner that is "inconsistent with the proper performance" of your public duties, there is no prohibition within the Code of Ethics for you and a co-worker to switch work shifts, even where you provide additional compensation to this co-worker. The COE cannot opine as to internal county government policy and procedure regarding such a shift change arrangement.

THE FACTS as we understand them are as follows:

You and your co-worker are employed at the Palm Beach International Airport (PBIA) by the Palm Beach County Department of Airports in the Airport Communications Center, which operates continuously 24 hours per day. As such, there are three employee work shifts at this center. Day shift (7:00 a.m. to 3:00 p.m.), evening shift (3:00 p.m. to 11:00 p.m.), and midnight shift (11:00 p.m. to 7:00 a.m.). You normally are scheduled to work during the day shift. Neither you nor your co-worker has any supervisory authority over each other.

Due to a temporary schedule change, you are slotted to work on the midnight shift for a month sometime in the near future. You consider this a hardship, and asked a co-worker who works the evening shift to change shifts with you for this period. Both of you agreed to swap shifts, and agreed

that you would provide additional financial compensation to the co-worker for agreeing to change shifts with you during this time period. You advise that swapping shifts to cover time off for family issues or vacation requests is common practice in your section. Further, your immediate supervisor has already agreed to allow the shift swap between you and your co-worker.

You asked for an advisory opinion in this case, because you were told by another co-worker that because additional financial compensation is to be paid, this arrangement may violate the Palm Beach County Code of Ethics.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Sec. 2-443. Prohibited conduct.

(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities: (Emphasis added)

(1) Himself or herself;

(b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties. (Emphasis added)

Under the facts as you presented, your agreement to change shifts with a co-worker is not based on obtaining a "special financial benefit" for you, since you are actually paying for the privilege of working a more desirable work shift. Insofar as your co-worker is concerned, although she will receive a financial benefit under this arrangement, under the facts and circumstances you submitted, the COE does not consider either employees actions as being a "use of official position" for the purpose of obtaining a special financial benefit as contemplated by the code. Therefore, §2-443(a)(1), *Misuse of public office or employment*, is not applicable to these circumstances.

However, since both you and your co-worker would receive a "benefit" or "exemption" under this arrangement, it is necessary to also review the language of §2-443(b), *Corrupt misuse of official position*. As listed above, a "corrupt misuse" under this section requires that the employee seek, "to corruptly obtain a special privilege, benefit or exemption for himself, herself, or others." This section goes on to define the term "corruptly" to mean, "done with wrongful intent and for the purpose of obtaining...any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties." (Emphasis added.)

While the swapping of shifts results in a benefit for you and your co-worker, neither action can be said to be done for a "corrupt" purpose, because arranging an appropriate schedule in which both work

shifts are adequately covered is not an action that would be considered to be "inconsistent with the proper performance of your public duties."

Furthermore, the fact that you both agree that the co-worker who switched her schedule to work the less desirable midnight shift deserves to be additionally compensated, tends to show that this additional payment is compensation for taking on an additional hardship, which is also not prohibited under the Code based on these facts and circumstances. Therefore, as long as the arrangement does not violate policy, an issue of which we cannot opine, it is not prohibited by the Code of Ethics.

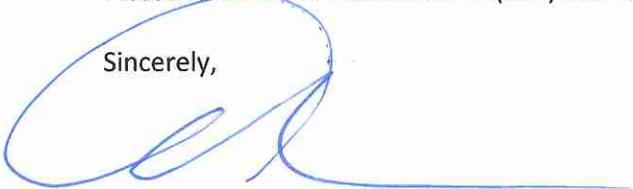
Finally, since the financial benefit obtained by the co-worker is for the additional burden of working a less desirable shift, and is therefore compensation, §2-444, *Gift law*, and its prohibitions and/or reporting requirements are not applicable to this issue.

IN SUMMARY, under the specific facts you have submitted, the Palm Beach County Code of Ethics does not prohibit co-workers from switching work shifts, even where one receives additional financial compensation from the other.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/meb



Palm Beach County Commission on Ethics

Commissioners

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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

July 21, 2011

Darlene Kostrub, Chief Executive Officer
Literacy Coalition of Palm Beach County
551 SE 8th Street, Suite 505
Delray Beach, FL 33483

Re: RQO 11-046
Gift Law/Fundraising

Dear Ms. Kostrub,

Your request for an advisory opinion from the Palm Beach County Commission on Ethics has been received and reviewed. The opinion is rendered as follows.

YOU ASKED in your email dated June 30th, 2011, whether the Literacy Coalition of Palm Beach County could continue to host the Mayors' Literacy Luncheon, an annual event sponsored by the Coalition, Comcast Cable and the League of Cities, designed to inform city officials about literacy programs available to their citizens.

IN SUM, you are not prohibited from inviting mayors, municipal officials and staff to the Literacy Coalition's annual luncheon. For those municipalities where you are not a vendor, there is no prohibited limit as to the value of the luncheon. As a vendor to two municipalities, you must adhere to gift law limitations as do the attendees of the event. In those municipalities, the value of the luncheon tickets must not exceed \$100.

THE FACTS you submitted are as follows:

You are the Chief Executive Officer of the Literacy Coalition of Palm Beach County. The Literacy Coalition is a 501(c)3 non-profit organization dedicated to improving the quality of life in Palm Beach County through promoting and achieving literacy for all residents. For the past three years, the Literacy Coalition has held a Mayors' Literacy Luncheon at the Ritz Carlton in Manalapan, inviting the mayor of each municipality and encouraging them to bring two other city representatives to the event. The Literacy Coalition sponsors the luncheon in conjunction with the League of Cities and Comcast Cable and the meeting is designed to inform city officials about literacy programs available to their citizens and to their cities.

Based upon the information you provided, the Literacy Coalition does not employ lobbyists, but provides work place education classes to West Palm Beach and Boynton Beach, charging those municipalities program service fees of \$8,000 and \$5,000 respectively. The Mayors' Literacy Luncheon is not ticketed or open to the public; however, you anticipate the cost per person will not be more than \$50 dollars. In previous years, while several guests have elected to attend with their spouse, invitations are distributed by you to mayors and city officials only. You personally do not employ lobbyists or lobby in any other capacity.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-442 defines Vendor as “any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction...”

The Literacy Coalition provides workplace education classes in West Palm Beach and Boynton Beach and charges a service fee annually to both municipalities. Under the code of ethics, the Coalition is considered a vendor of West Palm Beach and Boynton Beach.

Sec. 2-444(a)(1) of the gift law prohibits members of a local governing body or municipal employees, or any other person or business entity on his or her behalf, from soliciting or accepting a gift with a value of greater than \$100 in the aggregate for the calendar year from any vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to their municipality. This prohibition applies equally to you as a vendor. **Sec. 2-444(a)(2)** prohibits a vendor from giving, directly or indirectly, a gift of greater than \$100 in the aggregate per calendar year to a person who the vendor knows is a public official or employee where the vendor sells or leases to the municipality.

Sec. 2-444(e) prohibits any public official or employee from accepting a gift of any value in exchange for the past, present and future performance or non-performance of a legal duty or official public action. As long as the gift does not violate this section, elected officials and city staff are not prohibited from accepting up to \$100 dollars in the aggregate, over the course of the calendar year, from a vendor, lobbyist or principal or employer of a lobbyist.

While there are exceptions to the gift law limitations as they relate to “public events, appearances or ceremonies” which involve a “ticket, pass or admission” furnished by a nonprofit sponsor organization, your event is not open to the public as the tickets are distributed only to public officials and staff. Therefore, the gift law exception contained in **sec. 2-444(g)(1)i.** of the code is not applicable.

You are a vendor of West Palm Beach and Boynton Beach. Nevertheless, each official or staff member from Boynton Beach and West Palm Beach may accept up to \$100 in the aggregate over the course of the calendar year from the Literacy Coalition and remain in compliance with the code. Similarly, if Comcast, an event sponsor, is a vendor of any of the municipalities in attendance, the same gift limit would apply to any gift of tickets or admissions given by Comcast.

You indicated that in the past, spouses of municipal officials have attended. The acceptance of a ticket by the spouse of an official or employee in this context is considered a gift to the official or employee.¹ If given by a vendor, as long as the cost of two luncheons does not exceed \$100, the spouse may attend. If the cost exceeds \$100, the public official or employee may still attend, provided that the amount in excess of \$100 is paid back to the vendor within 90 days.² Within these parameters, so long as the official or employee does not accept anything of value because of an “official act taken” or “duty performed,” which would result in a quid pro quo in exchange for attending the event, attendance and acceptance of lunch does not violate the gift law.

¹ § 34-13.310(6)(a) Indirect gifts.

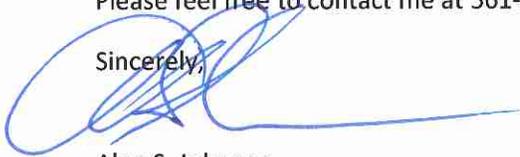
² § 112.3148(7)(b), Florida Statutes. Compensation provided by the donee to the donor, if provided within 90 days after receipt of the gift, shall be deducted from the value of the gift in determining the value of the gift.

IN SUMMARY, based on the information you have provided, you are not prohibited from holding the Mayor's Literacy Luncheon and inviting the mayors and two other city representatives from all 38 municipalities within Palm Beach County to attend the event so long as the requirements and limitations of the gift law are followed.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/mr/gal



Palm Beach County Commission on Ethics

Commissioners

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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

July 15, 2011

Shelley Vana, Commissioner
301 N. Olive Avenue, Suite 1201
West Palm Beach, FL 33401

Re: RQO 11-048
Gift Law

Dear Commissioner Vana,

Your request for an advisory opinion from the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows.

YOU ASKED in your email dated July 5, 2011 whether you, as a Palm Beach County Commissioner, could accept the 2011 County Commissioner of the Year Award from the Palm Beach County Business Leadership Network and attend the associated awards luncheon.

IN SUM, you are not prohibited from accepting an award for civic achievement from the Palm Beach County Business Leadership Network or from attending the awards luncheon.

THE FACTS you submitted are as follows:

You are a Palm Beach County Commissioner and have been selected to receive the 2011 County Commissioner of the Year Award from the Palm Beach County Business Leadership Network (BLN). PBCBLN is a 501(c)3 non-profit organization that operates in conjunction with the Coalition for Independent Living Options (CLIO) and serves as a network of for-profit businesses, service agencies and educational institutes, interested in promoting employment options for people with disabilities. CLIO promotes independence for people with disabilities and receives funding from the United Way. PBCBLN staff noted that Commissioner Vana was nominated for this award as a result of her responsiveness to many of the issues facing persons with disabilities in Palm Beach County, as well as her years of service to Palm Beach County schools.

While the Business Leadership Network has existed statewide for several years, the Palm Beach County Chapter was founded in February of 2010. The BLN presents several awards yearly including, Business Leader of the Year, Employer of the Year, On the Job Training Site of the Year and Adult Leader of the Year. The BLN is not a principal or employer of a lobbyist or a vendor; however, while CLIO and United Way are not principals or employers of lobbyists, they are vendors of the County.

Staff contacted the BLN and determined that CLIO will purchase the proposed award which is an 8 by 10 wooden wall plaque valued at \$30 dollars. The BLN intends to present the award at its "Making Connections" conference luncheon on August 24, 2011. The "Making Connections" employer conference is free to local businesses and provides resources and education about the advantages of hiring, retaining and promoting people with disabilities. Both breakfast and lunch will be provided without cost to attendees. The actual per person cost to BLN for breakfast and lunch is \$6.96 and \$14.95 respectively, and will be paid by the United Way.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Sec. 2-444. Gift law.

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

You may not accept a gift of any value in exchange for the past, present and future performance or non-performance of a legal duty or official public action. That being said, you are not prohibited from accepting up to \$100 dollars in the aggregate, during the calendar year, from a vendor, lobbyist, or principal or employer of a lobbyist. While BLN is not a vendor, event and funding sponsors CLIO and United Way of Palm Beach are vendors of Palm Beach County. Attendance at the event is free. The BLN breakfast cost is \$6.96 and the awards luncheon is valued at \$14.95 per person. Even if considered an indirect gift from a county vendor, either CLIO or United Way, the total amount does not exceed \$100. Therefore, consideration of the gift in the context of sec. 2-444(a)(1) prohibitions is not required.

In addition, under sec. 2-444(g)(1)i., accepting a ticket, pass or admission to a public event, appearance or ceremony sponsored by a nonprofit organization that does not employ a lobbyist would not be prohibited regardless of the cost of the event, provided the ticket, pass or admission is given by a representative of the nonprofit sponsor who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist.

So long as you do not accept anything of value because of an "official act taken" or "duty performed," which would result in a quid pro quo in exchange for attending the event, attendance and acceptance of breakfast and lunch does not violate the gift law. Section (g)(1)c addresses receipt of the award.

Sec. 2-444(g)

- (1)c. For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the

value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

(1) Exceptions. The provisions of subsection (g) shall not apply to:

c. Awards for professional or civic achievement;

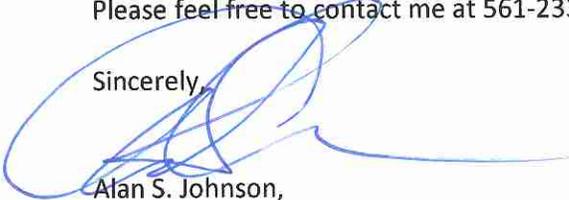
The definition of "gift", specifically excludes awards for professional or civic achievement. You are being honored for your commitment to issues facing persons with disabilities in Palm Beach County and for your years of government service; for your professional and civic achievement. Therefore, you are not prohibited from accepting the BLN's 2011 Commissioner of the Year Award.

IN SUMMARY, based on the information you have provided, you are not prohibited from accepting the BLN's 2011 Commissioner of the Year Award. Awards for professional or civic achievement are not considered gifts under the gift law provisions of the code of ethics. Furthermore, you are not prohibited from attending the accompanying award luncheon.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/mr/gal



Palm Beach County Commission on Ethics

Commissioners

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Bruce E. Reinhart

Executive Director

Alan S. Johnson

July 25, 2011

Tammy K. Fields, Esquire
Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, Florida 33401

Re: RQO 11-058
Contractual Relationships/Misuse of Office

Dear Ms. Fields,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your submission dated July 13, 2011, whether an income-eligible County employee may receive a purchase assistance mortgage or rehabilitation mortgage from the Palm Beach County Housing and Community Development Department, a program that is funded by the United States Department of Housing and Urban Development (HUD).

IN SUM, based on the facts you have submitted, County employees may not use their public position to give themselves a special financial benefit; a benefit not shared with similarly situated members of the community. Similarly, County employees may not enter into contracts for goods or services with the County unless the facts and circumstances of the transactions come within an exception to section 2-443(d) *Contractual relationships*. In this case, County employees are receiving and contracting for the same benefit as eligible members of the general public, an exception to section 2-442(d). Accordingly, a County employee is not prohibited from obtaining a Palm Beach County funded HUD loan where they are approved for the loan on the same terms as any other Palm Beach County resident.

THE FACTS you submitted are as follows:

You are a Senior Assistant County Attorney for Palm Beach County. Palm Beach County reviews and administers United States Department of Housing and Urban Development (HUD) low-income housing and rehabilitation loans and in certain instances, Palm Beach County employees may be income-eligible to receive assistance. HUD requires, pursuant to 24 CFR 570.611(c), that an exemption request be made to HUD for any County employee. As part of that request, the County must state that the assistance is not a conflict of interest under any local law.

In this particular situation, the County employee requesting funding under the Federal Neighborhood Stabilization Program works for the county's Head Start program and does not oversee administer or supervise the contract in any way. County employees are made aware of this program in the same manner as any other member of the public. All applicants must go through an extensive application process and meet federal income requirements.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Sec. 2-443(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

- (1) Himself or herself;

Sec. 2-443(d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. *This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public.* (emphasis added)

Sec. 2-443(a) prohibits employees from using their official position with the County, in any way, to give themselves a special financial benefit. Here, because the HUD program is advertised to employees in the same manner as it is advertised to the general public, and employees must be income-eligible in the same way as any other member of the public, they are similarly situated and there is no special financial benefit. Furthermore, this particular employee does not oversee or administer the Palm Beach County Housing assistance program.

Sec. 2-443(d) prohibits employees from entering into contracts with the government entity they serve, unless one of several exceptions applies. Much like the misuse of office section discussed above, in this case, a county employee is entering into a contract for services with Palm Beach County, but the Palm Beach County Housing Program was made available to him on the same terms available to all members of the public. This section specifically excludes transactions with the public entity *on the same terms available to all members of the public.*

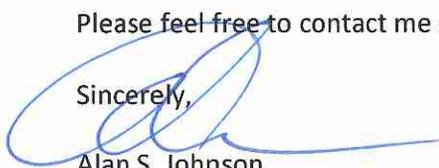
IN SUMMARY, based on the information you have provided, a county employee is not prohibited from entering into a transaction with the county where the goods obtained are available equally and under

the same terms to all members of the general public, provided that the public employee does not use his official position in a manner that will result in a special financial benefit to himself, not shared with similarly situated members of the general public. Likewise, so long as county employees are eligible for the federal housing loan program on the same terms available to all members of the public, and no influence is used by the public employee, the county is not prohibited from facilitating a HUD mortgage under the Palm Beach County Code of Ethics.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/mr/gal



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

July 27, 2011

Jody Forsythe, Finance Director
Village of Tequesta
345 Tequesta Drive
Tequesta, FL 33469

Re: RQO 11-061
Gift Law

Dear Ms. Forsythe,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows.

In your email of July 22, 2011, you asked whether Village of Tequesta employees may attend an annual symposium presented by a vendor of the Village.

IN SUM, Tequesta employees are not prohibited from attending a symposium and lunch sponsored by a vendor of the village, so long as the cost of the event per person does not exceed \$100 and the gift is not accepted in exchange for the performance or non-performance of a legal duty or an official public action.

THE FACTS as we understand them are as follows:

You are the Finance Director for Tequesta and your department has been invited to attend an 8-hour educational training symposium presented by the Village's outside audit firm, Marcum LLP. The symposium is open to all governmental entities in South Florida and will address government accounting principles. The vendor, Marcum LLP, anticipates that the total cost of the seminar, including the room rental rate, speaker fee and lunch for all attendees will not exceed \$4,000 and approximately 150 to 200 employees will attend.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics.

Sec. 2-444(a)(1) of the gift law prohibits members of a local governing body or municipal employees, or any other person or business entity on his or her behalf, from soliciting or accepting a gift with a value of greater than \$100 in the aggregate for the calendar year from any vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to their municipality. Here, using the estimates provided to you by the vendor, the total cost per person will not exceed \$30.

Sec. 2-444(e) prohibits any public official or employee from accepting a gift of any value in exchange for the past, present and future performance or non-performance of a legal duty or official public action. As long as the gift does not violate this section, elected officials and city staff are not prohibited from accepting up to \$100 dollars in the aggregate, over the course of the calendar year, from a vendor, lobbyist or principal or employer of a lobbyist. Accordingly, Tequesta employees are not prohibited from attending the symposium and accepting lunch.

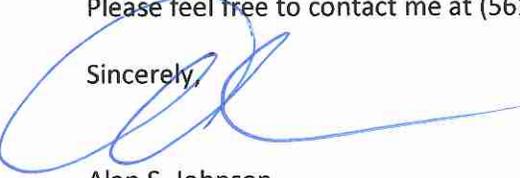
Sec. 2-444(g)(1)h. excludes from the definition of gift, *registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses either properly waived or inapplicable pursuant to §2-443(f), provided that attendance is for governmental purposes, and attendance is related to their duties and responsibilities as an official or employee of the county or municipality.*¹

IN SUMMARY, based on the information provided, Tequesta employee attendance at the upcoming symposium is related to their duties and responsibilities as employees of the Village. Accordingly, Tequesta employees are not prohibited from attending the symposium or from accepting lunch, so long as the requirements and limitations of the gift law are followed.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/mr/gal

¹ Since the cost of the event is less than \$100 we need not examine the nature of the conference in terms of its exemption from the gift law as an educational or governmental conference.

XIII – STAFF ANALYSIS AND SYNOPSIS OF OPINIONS: NON-PROFIT CHARITABLE FUNDRAISING

Effective June 1, 2011, § 2-444(h) of the revised code of ethics permits the solicitation of charitable donations from vendors, lobbyists and principals provided a detailed log is submitted to the COE for transparency purposes and *so long as there is no quid pro quo of other special consideration, including any direct special financial benefit to the official or employee or to the person or entity being solicited.*

STAFF ANALYSIS:

There have been several requests for advisory opinions interpreting the code in relation to charitable fundraising. A primary issue is the relationship of the gift law to other sections of the code, as it pertains to regulation and prohibition of fundraising activities. The gift law, section 2-444, is a self contained series of regulations dealing with the solicitation, acceptance or giving of gifts involving public employees or officials.

Section 2-444(h) *Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization* begins with the following language; *Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible...*

Sections 2-444(a) and (b) specifically prohibits public officials and employees from soliciting or accepting gifts with a value in excess of \$100 in the annual aggregate, and the giving of such gifts by vendors or lobbyists of the public entity. The solicitation exception refers to a specific section of the code, vendor/lobbyist gift prohibitions. Therefore, it should not affect other areas of the code, including the misuse of office and voting conflict provisions of sec. 2-443.

Section 2-443(a) prohibits a public official or employee from giving a special financial benefit, not shared with similarly situated members of the general public, to among other things, a non-profit organization where the public servant serves as an officer or director. Therefore, notwithstanding the exception to the gift law, a public servant must also adhere to the misuse of office prohibitions separately and apart from gift law considerations.

In addition, the reference in sec. 2-444(h), stating its specific purpose as an exemption to the prohibitions of sections 2-244(a) and (b), would mean that the required log pertains only to those solicitations and donations otherwise prohibited by those sections. Prior to the adoption of the charitable donation exception, a public official or employee was not prohibited from soliciting a donation in any amount from non-vendors or non-lobbyists of the public entity. Therefore, it is the position of staff that the log requirement for charitable solicitations applies only to those solicitations otherwise prohibited, namely, solicitations and donations from vendors, lobbyists, principals and employers of lobbyists who lobby the public servant's government, or board in the case of advisory boards.

STAFF RECOMMENDATION:

Staff recommends that the COE interpret the plain language of section 2-444(h) to apply only to the prohibitions enumerated in sections 2-444(a) and (b). Therefore, misuse of office sections involving special financial benefit and corrupt misuse issues, are separate and apart from the gift law requirements and prohibitions. The following proposed advisory opinions apply the above analysis and staff recommends their approval;

RQO 11-029 Kimberly Mitchell (re-submitted)

A West Palm Beach City Commissioner asked whether, as an elected official, she could serve on the board of directors of a local non-profit organization and if she could continue to fundraise on behalf of the organization. The COE discussed the request on July 7, 2011 and tabled the matter for August 4, 2011.

Staff submits the following for COE approval: The commissioner may not use her elected office to give a special financial benefit to a non-profit organization while serving as an officer or director of the charity. Using one's official title in solicitations on behalf of a charity while serving as an officer or director would constitute a violation of § 2-443(a)(7) of the misuse of office section of the code. She may either resign her position with the charity or not use her official title in soliciting, directly or indirectly, on behalf of the charity. When soliciting donations on behalf of the non-profit, she must keep a detailed log of any solicitation of donations from vendors or lobbyists/principals of West Palm Beach in excess of \$100. The log must be submitted to the COE within 30 days of the charitable event, or if not associated with an event, within 30 days of the solicitation. Lastly, she may not solicit a donation in exchange for any special consideration on her part as a city commissioner.

RQO 11-039 Keith Davis

A village attorney asked whether a municipality may hold a charity fund raising event on behalf of a non-profit that benefits public safety officers, using off-duty firefighters and certain on-duty municipal staff to solicit and run the event. A municipal employee and a Village council member serve on the board of this non-profit and donations will be solicited from vendors of the municipality. The event will include raffles, door prizes and silent auctions. All money raised will be deposited into the non-profit's account; however, 75 % of the funds raised will be redistributed to other local non-profits approved by the Village Council.

Staff submits the following for COE approval: An employee or official of the municipality may not use their official position to give a special financial benefit to any non-profit of which they are an officer or director. Therefore, while an officer or director, neither they nor anyone on their behalf or on behalf of the non-profit, may use their official title to solicit donations from vendors, lobbyists or their principals. Lastly, in order to comply with the conflict section of the code, officials must abstain and not participate in any official action that will specially financially benefit a non-profit of which they are an officer or director.

The Village may hold a fundraising event for the purpose of assisting local non-profit organizations, including organizations that provide assistance to Village employees, and may assign staff members to assist with the planning of the event. So long as the Village Council determines that soliciting funds for this event is a public purpose, Village staff members may solicit on behalf of the non-profit on village time. However, municipal staff may not solicit donations from village vendors, lobbyists, principals and employers of lobbyists on Village time. If staff elects to solicit from vendors, lobbyists, principals or employers of lobbyists of the Village, they must keep a log of any solicitation in excess of \$100 and provide it to the COE within 30 days of the event.

RQO 11-041 Edward Rodgers

The Chair of the Palm Beach County Commission on Ethics asked whether he was prohibited from accepting an award for professional achievement, attending the accompanying awards event and what, if any, obligations existed concerning solicitations made by a non-profit organization in association with the event.

Staff submits the following for COE approval: The Commissioner is not prohibited from accepting an award for professional achievement, nor is he prohibited from accepting tickets from the non-profit organization and attending the accompanying awards reception. Awards for professional and civic achievement are not considered gifts under the gift law provisions of the code of ethics. The non-profit sponsor is not prohibited from using his name, in reference to his years of service as a Judge, civil rights leader and advocate, in the written materials promoting the award and the event, so long as they submit a record of all solicitations made, and pledges and donations received from vendors, principals and employers of lobbyist who lobby the Commission on Ethics or the department that is subject to the commission's authority, in accordance with the transparency requirements of the Code of Ethics.

RQO 11-051 Bill Greene

A Juno Beach Town Councilman asked whether as a director of a Florida non-profit corporation, he was permitted to solicit donations and hold fundraising events for the non-profit while serving on the Town Council. The Councilman also anticipated eventually receiving compensation from the non-profit.

Staff submits the following for COE approval: the revised code of ethics permits a public official or employee to solicit contributions, directly or indirectly, on behalf of a non-profit charitable organization, including solicitations and acceptance of donations from vendors and lobbyists of the Town, however these solicitations may only be made if a solicitation log is maintained for transparency.

Notwithstanding this exception to the gift law prohibitions, as a director of a non-profit, a public official or employee may not use his or her public position to specially financially benefit the non-profit they serve, including use of their official title, directly or indirectly, in soliciting donations. In addition, conflict of interest provisions apply to an official whose vote may specially financially benefit a non-profit for which the official is an officer or director. Should the official or employee be compensated by a non-profit organization in the future, the non-profit may be considered an outside employer or business. Public officials and employees may not use their public position to specially benefit themselves or their outside employer or business.

RQO 11-059 Mark Hall

The Chief of Police for the Village of Palm Springs asked whether employees of Palm Springs may participate in a non-profit event fundraiser. To the best of his knowledge, no member of his staff, Village staff or Village officials are officers or directors of the non-profit.

Staff submits the following for COE approval: Village employees and officials may participate in the non-profit event, but they may not solicit contributions from vendors, lobbyists, or principals or employers of lobbyists of Palm Springs while on-duty. If employees elect to solicit from vendors, lobbyists, principals or employers of lobbyists in their personal time, they must keep a log detailing the name of the charity, the person or entity who solicited the event for which the funds were solicited, and the amount pledged. This log must be submitted to the Commission on Ethics within 30 days of the event.

August 5, 2011

Kimberly Mitchell, City Commissioner
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33401

Re: RQO 11-029
Misuse of Office/Gift Law

Dear Commissioner Mitchell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on July 7, 2011, continued the matter and rendered its opinion at a public meeting held on August 4, 2011.

YOU ASKED in your email dated June 1, 2011, whether serving on the board of directors of West Palm Beach Family Zone, a local non-profit organization created a conflict of interest with your service to the City of West Palm Beach as a City Commissioner, and additionally, whether you could continue to fundraise on behalf of West Palm Beach Family Zone (WPBFZ).

IN SUM, as an elected official you are prohibited from using your official position as a City Commissioner to give a special financial benefit, not shared with similarly situated charitable organizations in the community, to a non-profit organization of which you are an officer or director. Lending your name and official title to a fundraising effort would per se constitute using your elected office to specially financially benefit WPBFZ. Therefore, in order to use your official title to solicit donations on behalf of WPBFZ, you would need to resign your position with the charity. In the alternative, should you remain as an officer or director, any solicitation would need to be in your name without reference to your public title. This would apply directly to you, as well as anyone indirectly soliciting on your behalf.

Insofar as the gift law is concerned, provided you are not an officer or director of the charity, you are not prohibited from using your official title in soliciting or accepting donations on behalf of WPBFZ. Likewise, you are not prohibited from soliciting or accepting donations while maintaining your position with the charity, provided that you do so in your private and not titled capacity. If you solicit donations, directly or indirectly, in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of West Palm Beach, you (or the charity if solicitations are made in your name) must maintain a record of the solicitations from City vendors, lobbyists, principals or employers of lobbyists, and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

THE FACTS as we understand them are as follows:

You are a West Palm Beach City Commissioner and serve on the board of the West Palm Beach Family Zone (WPBFZ). You were a founding member of Mission Sandbox, now WPBFZ, and have actively served on its board of directors since 1998. WPBFZ works to implement anti-poverty measures in high-risk neighborhoods, specifically a 50 block span in North West Palm Beach. WPBFZ has adopted and promoted the use of the Harlem Children's Zone model, which has been used to alleviate the cycle of poverty in Harlem, New York. As a city commissioner, you have publically advocated for the adoption of this model- using public-private partnerships to end the cycle of poverty in low income neighborhoods.

While WPBFZ may apply for funding from the City of West Palm Beach, the majority of its funding comes from private donations. Over the years, you have been active in soliciting these private funds. Currently, WPBFZ is attempting to obtain matching grants from the federal government.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics, which took effect June 1, 2011.

Sec. 2-443 Prohibited Conduct

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in *a special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities:
 - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

As an elected official serving the City of West Palm Beach, you may not use your official position to give "a special financial benefit, not shared with similarly situated members of the general public" to a non-profit organization of which you are an officer or director. Moreover, as an officer or director of a charitable organization, lending your name and official title to fundraise for that charity would constitute using your position *per se* to specially financially benefit WPBFZ, to the exclusion of all other charitable organizations similarly situated, resulting in a violation of the misuse of office section of the code.

Similarly, as an officer or director of WPBFZ, if any matter that would result in a special financial benefit to WPBFZ comes before the city commission, you must abstain from voting and may not participate in the discussion surrounding the issue.

Section 2-444(a) of the Palm Beach County Code of Ethics prohibits a member of a local governing body, "or any other person or business entity on his or her behalf" from knowingly soliciting or accepting, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year, from

a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the municipality.

Section 2-444(h), an exception to the prohibition against soliciting or accepting charitable contributions in excess of \$100 from vendor and lobbyist related entities states as follows:

(h) Solicitations of Contributions on Behalf of a Non-profit Charitable Organization.

- (1) Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.
- (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the Commission on Ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on Ethics. The form shall be filed within 30 days from the occurrence of the event for which the solicitation was made, or if no event, within 30 days from the occurrence of the solicitations.
- (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitations of charitable contributions described in this subsection.

The Palm Beach County Code of Ethics gift law, as revised, no longer prohibits elected officials, advisory board members and public employees from soliciting vendors, lobbyists, principals or employers of lobbyists who lobby their government when the solicitation is made on behalf of non-profit or charitable organizations, so long as a detailed log is maintained pursuant to 2-444(h). A *charitable solicitation log* can be found on our website at www.palmbeachcountyethics.com/Forms and should include the following information:

- 1) Name of the charitable organization for which you are soliciting; and
- 2) Name of the person and entity that was solicited; and
- 3) The event, if any, for which the funds were solicited; and
- 4) Amount of funds solicited and pledged.

You must file this form with the Commission on Ethics office within 30 days of the charitable event or within 30 days of the solicitation if not related to an event. You may not solicit any person or entity with

a pending application before West Palm Beach. Most importantly, you must take great care that solicitations accepted on behalf of WPBFZ do not result in a *quid pro quo* for your “official action” as city commissioner.

Notwithstanding the gift law exception, the misuse of office provision specifically prohibits using your official position to specially benefit a charity if you are an officer or director. In order to fundraise using your official title, you would need to resign your position as an officer or director of WPBFZ to avoid violating the misuse of office restrictions, or in the alternative, maintain all solicitation, direct and indirect, without the use of your official title as City Commissioner. In addition, you may not use West Palm Beach staff or other municipal resources to solicit donations.

THE RATIONALE for limiting the manner of solicitation is grounded in the desire to avoid the appearance that these solicitations and donations are being made to obtain access to or otherwise ingratiate the donor to the elected official. Similarly, by prohibiting officials and employees from using their public office to give a special financial benefit to a particular charity of which they are an officer or director, the code further attempts to limit potential misuse of a public duty to treat all citizens and entities on an equal footing.

IN SUMMARY, you may not use your elected office to give WPBFZ a special financial benefit while serving as an officer or director of the charity. As an officer or director of a charity, soliciting donations on behalf of that charity using your name and official title would constitute a violation of the misuse of office portion of the code. If you choose to resign your position as an officer or director, or use only your name and not your official title to solicit on behalf of the charity, any solicitation of donations from vendors or lobbyists of West Palm Beach in excess of \$100 must be transparent in that you, or anyone soliciting in your name, must keep a detailed log of your contact with those donors and submit a copy to the Palm Beach County Commission on Ethics. In any event, you may not solicit any gift on behalf of WPBFZ in exchange for any special consideration or other “quid pro quo” in your official capacity as a City Commissioner.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mr/gal

August 5, 2011

Keith W. Davis, Esquire
1111 Hypoluxo Road, Suite 207
Lantana, FL 33462

Re: RQO 11-039
Prohibited conduct, Gift law, Solicitations for Non-Profit Charitable Organizations

Dear Mr. Davis,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on August 4, 2011.

YOU ASKED in your email dated June 17, 2011, whether it violates the Palm Beach County Code of Ethics for the Village of Tequesta to hold a charitable fund raising event as a community outreach program of the Village Fire Department, where such program is approved by the Village Council, organized and run by the combined efforts of a non-profit entity, off-duty members of the Village Fire Department, and certain on-duty members of Village staff, and where donations to support these events are solicited from vendors of the Village of Tequesta to support the event. Additional information was supplied to COE staff via emails by Village Fire Chief James Weinand.

IN SUM, the Village of Tequesta may organize and hold fundraising events to benefit non-profit organizations of their choosing, so long as there is no quid pro quo or other special consideration given by officials or employees to any donor for their participation, and so long as no person or entity with a pending application for approval or award currently before the Council is solicited for a donation.

However, any member of the Village Council who is an officer or director of any of the non-profit organizations benefiting financially from the fundraiser must abstain and may not participate in any Council discussions pertaining to these events or otherwise use their official position to specially financially benefit the charity. Additionally, under the facts you have submitted, no on-duty Village staff or municipal resources may be used to solicit donations from vendors, lobbyists, principals or employers of lobbyists for this event. Lastly, public employees or officials who solicit must comply with the disclosure requirements as listed under §2-444(h)(2), including the timely transmittal of a log listing all Village vendors, lobbyists,

principals and employers of lobbyists solicited, and donations pledged for this event to the PBC Commission on Ethics.

THE FACTS as we understand them are as follows:

You are the Village Attorney for the Village of Tequesta. The Village is involved in supporting a fundraising event to benefit the "Friends of Public Safety" (FOPS), which is recognized under IRS regulation 501(c)(3) as a tax-exempt non-profit organization, established by Village firefighters to support public safety personnel in times of need. The event will also help to support other select local charities as designated by FOPS. According to information provided by Fire Chief Weinard and verified via the Florida Division of Corporations website (www.sunbiz.org), Fire Chief James Weinand and current Village Council Member James Humpage are both officers of FOPS.

The fundraising events are scheduled to be conducted by off-duty members of the Village Fire Department and other volunteers, and may include selected on-duty Village staff. The events include raffles, door prizes and silent auctions, and all money raised is deposited into the FOPS bank account for distribution as follows: 25% retained to support FOPS; 75% redistributed to support other local charities in Tequesta. FOPS members will meet with members of local charities to determine which charities are awarded a portion of available funds.

Once the event is planned, and the other charity recipients determined, the overall plan is presented to the Village Council to approve the event. The Council has in the past allowed certain Village staff to work on-duty hours to assist in organizing and conducting these events, and may decide to do so again. Prior to the date of the event, local businesses, including vendors of the Village, are solicited for donations of items for door prizes, raffles, or auction at the event. You have advised that there is no "quid pro quo" or special privilege or benefit given to any business or person who contributes to these events by the Village or any official or employee, and that no vendor with an application pending before the Village will be solicited.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Sec. 2-442. Definitions.

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager or employee.

Sec. 2-443. Prohibited conduct.

(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or

fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care *will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:* (Emphasis added)

(7) A civic group, union, social, *charitable*, or religious organization, or other not for profit organization *of which he or she (or his or her spouse or domestic partner) is an officer or director.* (Emphasis added)

(b) An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others

First, no public official or employee may specially financially benefit a non-profit civic, religious or other charitable organization where they or their spouse or domestic partner are an officer or director. Both Fire Chief James Weinand and Councilman James Humpage are officers and directors of FOPS according to Chief Weinand and Florida Division of Corporations records. They are both therefore prohibited under the Code of Ethics from using their official positions to assist in this effort, including taking part in discussions related to the Village sponsoring this event. Additionally, Councilman Humpage is prohibited from voting or participating in discussions during a Council meeting or otherwise contacting or influencing staff, where such action may specially financially benefit a charity where he or his spouse is an officer or director. He is also required to file a conflict disclosure form 8B with the Village Clerk and send a copy to the COE.¹

In addition, no public officials and employees may use their official positions or any property or resource which may be within their trust to “corruptly” benefit any person or entity. “Corruptly” means done with a wrongful intent, inconsistent with the proper performance of his or her public duties.

Sec. 2-444. Gift law.

(a)(1) No county commissioner, *member of a local governing body*, mayor or chief executive when not a member of the governing body, *or employee*, or any other person or business entity on his or her behalf, *shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.* (Emphasis added)

¹ Sec. 2-443(c) Disclosure of voting conflicts

- (g) For the purposes of this section, *"gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.* (Emphasis added)
- (h) Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization.
- (1) *Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.* (Emphasis added)
- (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the Commission on Ethics, *the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known.* The form shall be completed legibly and shall be *filed with the Commission on Ethics.* The form shall be filed within 30 days from the occurrence of the event for which the solicitation was made, or if no event, within 30 days from the occurrence of the solicitation. (Emphasis added)
- (3) Officials and employees *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions* described in this subsection. (Emphasis added)

Other than the misuse of office provisions involving public employees or officials who are officers or directors of charitable organizations and the prohibition against "corrupt misuse of official position", the Code of Ethics has no direct prohibition against the use of on-duty Village staff for preparation, organization or assisting with a charitable event. It should be noted, however, that the code section permitting solicitation of contributions specifically prohibits the use of staff or other Village resources for solicitation of charitable contributions by officials or employees on behalf of a non-profit organization.

Section 2-444(g)(1)e. specifically exempts gifts solicited or accepted by municipal employees on behalf of the municipality "in performance of their official duties for use solely by the county or municipality for a public purpose." In an advisory opinion dated October 26, 2010, a similar issue was encountered. It was determined where donated funds were given directly to the county for use in erecting a shade awning at a county pool, it was allowable even where the

real benefit of the awning was the non-profit Special Olympics². In that case the donation was made to the county, and it was the county who determined the proper use of the solicited funds for one of their pools. In your case, it is FOPS who determines the use of donated funds. Therefore, Village resources, including on-duty staff, cannot be used in solicitation of funds, and all solicitations for donations from municipal vendors must comply with the non-profit solicitation reporting provisions within §2-444(h)(2).

IN SUMMARY, the Village may hold a fundraising event for the purpose of assisting local non-profit organizations, including organizations set up to assist Village employees. The Village may also assign staff members and allow the use of resources provided they are not connected with solicitation of donations from Village vendors, lobbyists, principals and employers of lobbyists. However, employees of the Village may not use their official position to specially financially benefit any non-profit organization if they (or their spouse) are officers or directors of the non-profit. Additionally, a council member must abstain and not participate in any official action that will specially financially benefit a non-profit if they (or their spouse) are officers or directors of that charity.

In regards to the solicitation of donations, unless the solicitation is made by a public employee or official, on behalf of the public entity, in the performance of their official duties for use solely by the public entity for a public purpose, solicitations from vendors, lobbyists, principals and employers of lobbyists in excess of \$100 are prohibited unless a solicitation log is maintained and submitted. When soliciting under this exception, a public official or employee may not use public resources or staff to solicit, nor may a vendor with a pending application before the municipality be solicited.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/meb/gal

² RQO 10-027, also, see RQO 10-040(solicitation of vendor donations permitted for Fire-Rescue Department program)

August 5, 2011

Honorable Edward Rodgers
A.R.C. Mediation
250 S. Central Blvd., Apt. 104A
Jupiter, FL 33458

Re: RQO 11-041
Awards/Charitable Solicitation

Dear Judge Rodgers,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on August 4, 2011.

YOU ASKED in your submission dated June 22, 2011, whether you could accept the Anti-Defamation League's jurisprudence award and attend a fundraising reception, where you will accept the award and what limits, if any, apply to the League in advertising and soliciting for donations in conjunction with the event.

IN SUM, you are not prohibited from accepting an award for professional or civic achievement from the Anti-Defamation League or from attending the award reception. ADL is not prohibited from using your name in the written materials promoting the award and the event, so long as they submit a record of all solicitations made, and pledges and donations received, from vendors, lobbyists, principals and employers of lobbyists who lobby the Commission on Ethics, or the county department subject to the commission's authority, in accordance with the transparency requirements of the Code of Ethics.

THE FACTS as we understand them are as follows:

You are a Retired Judge and former municipal elected official. Currently you are Chairman of the Palm Beach County Commission on Ethics (COE). The Anti-Defamation League (ADL), a privately funded, non-profit, civil rights organization, seeks to present you with the ADL Jurisprudence Award.

The ADL has selected you for this honor for your commitment to end discrimination in Palm Beach County, specifically your service as the county's first African American prosecutor, state attorney, and judge as well as your commitment to desegregation and equal pay and your work establishing the first Drug Court in Riviera Beach. ADL intends to present you with the ADL Jurisprudence Award at a reception in December, 2011. The reception will serve as an ADL fundraiser through individual ticket sales and ADL's solicitation of corporate sponsors. ADL has not asked you to solicit for the event but is "hopeful that your friends, colleagues, and admirers from the community will support this event."

In publicizing the event, the ADL intends to refer to you as the Honorable Edward Rodgers in written materials and on the award itself. While ADL will maintain a record of all solicitations and pledges in accordance with 501(c)3 requirements, those records will remain confidential and are considered proprietary

by ADL. You are neither a member of the Board of Directors of ADL nor an officer of the organization. ADL is not a vendor or an employer of lobbyists within Palm Beach County.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

Sec. 2-256. Applicability of code of ethics ordinance.

The countywide code of ethics ordinance shall be applicable to all persons and/or entities within the jurisdiction of said ordinance and shall apply to the members and staff of the commission on ethics.

Sec. 2-444 Gift Law

(g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value... without adequate and lawful consideration.

Exceptions. The provisions of subsection (g) shall not apply to:

c. Awards for professional or civic achievement

The definition of "gift", specifically excludes awards for professional or civic achievement. You are being honored for your years of service to the community and specifically for your dedication to ending discrimination in all of its forms. Therefore, you are not prohibited from accepting the ADL Jurisprudence Award.

Sections 2-444 (b)(1) prohibits an advisory board member, or any other person or business entity on his or her behalf, from soliciting or accepting a gift greater than \$100 in the aggregate for the calendar year from a vendor, lobbyist, principal or employer of a lobbyist who lobbies the recipient's advisory board, or any county or municipal department subject to the board's authority. An advisory board is defined as "any advisory or quasi-judicial board created by the board of county commissioners..."¹ Although individual COE members are not appointed by the BCC, the COE was created by county ordinance.

ADL is not a vendor and does not employ lobbyists within Palm Beach County. Gift law limits, therefore, do not apply. If the value of the tickets to the event exceeds \$100, the gift needs to be reported on an annual gift reporting form pursuant to sec. 2-444(f)(2)b of the code of ethics.

Regarding direct or indirect solicitations of donations, in RQO 10-004 this Commission opined that while an organization may honor an official or employee, those who solicit in conjunction with that event may not solicit or accept gifts in excess of \$100 from lobbyists or principals or employers of lobbyists. This prohibition has since been extended to solicitation or acceptance of charitable gifts from vendors of the official's public entity or board or department, as applicable, as well. It should be noted that The Jurisprudence Award is based upon your prior service to the community, unrelated to your current official position as Chairman of the Palm Beach County Ethics Commission. However, while there is no expectation that you will personally solicit on behalf of ADL, much like the situation discussed in RQO 10-004, the Jurisprudence Award event will serve as fundraiser through associated requests for donations and event ticket fees. Since that opinion was issued, the code of ethics has been revised.

¹ §2-442 Definitions. (Code of Ethics)

According to section 2-444(h)1 of the revised Code of Ethics, solicitations may be made on behalf of a public official, provided a detailed log is maintained of *all donations* from vendors, lobbyists, principals and employers of lobbyists of that official's governmental entity, or board or department in the case of advisory board members, and the log is submitted within 30 days of the event to the Commission on Ethics. You have maintained that you do not intend to solicit directly on behalf of ADL, but ADL will be using your name and your former public title, Honorable Edward Rodgers. Anything that you are authorized to do directly may also be done on your behalf. ADL is permitted to use your name in its solicitations, but it must keep a log of *all donations* from vendors, lobbyists, principals and employers of lobbyists who lobby the Commission on Ethics, or the county department over which the COE exercises authority, and submit the log accordingly. The code revision was intended to allow members of the community, who are also elected officials, advisory board members, or municipal or county employees to solicit on behalf of religious, civic or other charitable organizations while maintaining appropriate transparency.

Based upon the revision, we recede from our prior decision in RQO 10-004. However, while charitable solicitations and donations surrounding an event whereby a public official or employee is an honoree or award recipient are permitted, solicitations, donations and pledges made by vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to the public entity served by the honoree must comply with the requirements of sec. 2-444(h) and be publicly disclosed.² Solicitations, pledges and donations by individuals or entities not doing business with the public entity, do not require disclosure.

IN SUMMARY, based on the facts and circumstances submitted, you are not prohibited from accepting the ADL Jurisprudence Award. Awards for professional or civic achievement are not considered gifts under the gift law provisions of the code of ethics. You are not prohibited from accepting tickets and attending the accompanying award reception. ADL is not prohibited from using your name, the Honorable Edward Rodgers, in reference to your years of service as a Judge and as a civil rights leader and advocate in the written materials promoting the award and the event, so long as they submit a record of all solicitations made, and pledges and donations received, from vendors, lobbyists, principals and employers of lobbyists who lobby your commission or the department that is subject to your commission's authority, in accordance with the transparency requirements of the Code of Ethics.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/mr/gal

² Palm Beach County has publicly accessible databases containing all registered lobbyists and vendors doing business or lobbying county government.

August 5, 2011

Mr. Bill Green, Councilman/Vice Mayor
Town of Juno Beach
410 Apollo Drive
Juno Beach, FL 33408

Re: RQO 11-051
Misuse of Office/Gift Law

Dear Councilman/Vice Mayor Greene,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on August 4, 2011.

YOU ASKED in your letter dated July 13, 2011, whether as a "principal" of a Florida non-profit corporation, Juno Beach Sports, Inc., you are permitted to solicit donations and hold fundraising events for the non-profit while serving as Vice-Mayor of the Town Council of the Town of Juno Beach. Additional information was provided by you orally and by e-mail on July 20, 2011.

IN SUM, you may not use your official position to specially financially benefit a non-profit organization if you are an officer or director of the non-profit. That would constitute a misuse of your public office. Therefore, as an officer or director, you may not solicit donations using your official title as Vice-Mayor. You may solicit as an un-titled individual, however, any solicitation, pledge or donation involving a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the Town of Juno Beach must be disclosed on a form provided by the Commission on Ethics for purposes of transparency. This exception to the gift law prohibition is available only to charitable organizations as defined under the Internal Revenue Code. Solicitation, direct or indirect, is permissible under this exception so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to you or the vendor/lobbyist being solicited. Lastly, you may not use municipal staff or resources in the solicitation of charitable contributions for Juno Beach Sports, Inc.

THE FACTS as we understand them are as follows:

You are a member of the Town Council for the Town of Juno Beach (the Town) and currently serve as Vice Mayor. You recently incorporated a non-profit corporation, Juno Beach Sports, Inc. (JBS). This entity is currently listed as a Florida non-profit corporation, however, your federal § 501(c)(3) status is "pending." You are currently on the Board of Directors of JBS.

JBS intends to organize and develop a recurring beach volleyball event in conjunction with Extreme Volleyball Professionals (EVP), a brand owned by Sports Endeavors, Inc. (SE), an Illinois corporation. EVP organize volleyball events across the country. The first such event is scheduled for November 12, 2011. JBS will solicit contributions, donating a portion of the proceeds raised by the event to the Loggerhead Marinelifelife Center, Inc., (LMC) a 501(c)(3) non-profit education and ocean conservation facility located in the Town. After EVP is paid their fee, and LMC

receives a charitable donation, any remaining funds will be applied to payment of education/travel expenses incurred by JBS and “potentially even compensation for professional work and accomplishment, to be shared among the JBS Directors.”

THE LEGAL BASIS for this opinion is found in both the misuse of office and gift law sections of the code of ethics.

Sec. 2-443 Prohibited Conduct

(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a *special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities:

(1) Himself or herself;

(4) An outside employer or business of his or hers, or of his spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;

(7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

While you are in a position of authority as an officer or director of JBS, you may not use your official position to specially benefit that organization. Using your name and official title in fundraising would specially benefit JBS, to the exclusion of all other non-profit entities. Therefore, you may not solicit or otherwise act, or influence others to act in such a manner by using your official title. It should be noted that sec. 2-443(c) *Disclosure of voting conflicts* similarly prohibits an official from voting or participating in a matter that will result in a special financial benefit as set forth in the misuse of office section as well. As a member of an organization (not a director or officer) there is no similar specific prohibition under the misuse of office or voting conflicts sections.

In addition, should you be compensated by JBS in the future, it may then be considered your outside employer or business. You may not use your official position to obtain a special financial benefit for yourself or your outside business or employer.

Sec. 2-244(c) prohibits an elected public official from soliciting “*a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.*” If you or any relative or member of your household receives compensation from donations to JBS that were solicited by you, directly or indirectly, from vendors or lobbyists of the Town, depending upon the facts and circumstances, such compensation may violate this section of the code.

Sec. 2-444(a) prohibits an elected official or employee of a municipality from soliciting or accepting “*...directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer or a lobbyist who lobbies*” the official or employee’s municipality. If you intend to solicit donations from vendors and lobbyists of the Town, or their principals or employers, you can do so for a non-profit charitable organization, as defined under the Internal Revenue Code, in a manner consistent

with the rules set forth in sec. 2-444(h) of the code of ethics. Keep in mind that as a director, these solicitations may not be made in your official capacity or title as Vice-Mayor of the Town.

Sec. 2-444(h) was added to the revised code of ethics to permit public officials and employees to transparently solicit contributions on behalf of non-profit charitable organizations. This section applies when the charitable organization solicits contributions from vendors or lobbyists of the official or employee's government entity. The rules allow these solicitations, provided that a detailed log is maintained of vendors and lobbyists solicited. The charitable solicitation form is provided on the Commission on Ethics web site at <http://www.palmbeachcountyethics.com/pdf/Forms/Solicitation%20Log.pdf>. Keep in mind that a solicitation is permissible *"so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited."* In addition, as stated above, since you are a director of JBS, provided that it fits the definition of a non-profit charitable organization as defined under the IRS code, you may solicit, but only in your private capacity. You, or anyone on your behalf, may not use your official position/title in mailings, advertisements, or any other oral or written solicitation. Additionally, no person or entity that has a pending application for approval or award of any nature before the town may be solicited, and no municipal staff or resource may be used in the solicitation of these charitable contributions.

IN SUMMARY, the revised code of ethics permits an official or employee to solicit contributions, directly or indirectly, on behalf of a non-profit charitable organization as defined under the IRS code. This includes solicitation and acceptance of donations from vendors and lobbyists of the Town, however, these solicitations may only be made if a solicitation log is maintained for transparency. Notwithstanding this exception to the gift law prohibitions, as a director of JBS, you may not use your official position in any way to specially financially benefit JBS, including the use of your official title in soliciting donations. Should you be compensated by JBS in the future, JBS may be considered your outside employer or business. You may not use your official position to benefit yourself or your outside employer or business.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/gal

August 5, 2011

Mark C. Hall, Chief of Police
Palm Springs Police Department
230 Cypress Lane
Palm Springs, FL 33461

Re: RQO 11-059
Prohibited conduct, Gift law, Solicitations for Non-Profit Charitable Organizations

Dear Chief Hall,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on August 4, 2011.

YOU ASKED in your email dated July 19, 2011, whether it violates §2-444(h)(1-3) *Solicitation of Contributions on Behalf of a Non-profit Charitable Organization* of the Palm Beach County Code of Ethics, for employees of the Village of Palm Springs to participate in the American Cancer Society's Breast Awareness Fund Raiser, slated to be held on October 22, 2011. Additional information was also provided by email to COE Staff.

IN SUM, the PBC Code of Ethics does not prohibit the participation of Village employees in a charitable event such as the American Cancer Society Breast Cancer Fundraiser, *so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited.* However, no person or entity with a current application for approval or award may be solicited. Any solicitation of vendors, lobbyists, principals or employers of lobbyists who lobby the Village that are in excess of \$100 must be disclosed on a solicitation log and submitted to the ethics commission within 30 days of the charitable event. In addition, the code prohibits the use of on-duty municipal staff or municipal resources to be used in the solicitation of these charitable contributions. If an official or employee is a director or board member of the non-profit charitable organization, he or she is prohibited under §2-443(a) *Misuse of public office or employment*, from using their official position to give any special financial benefit to the charity.

THE FACTS as we understand them are as follows:

You are the Chief of Police for the Village of Palm Springs Police Department (PSPD). Under your direction, members of the PSPD formed a committee to explore ways to increase team-building skills and general morale within the Department. The committee decided to participate in the American Cancer Society's Annual Breast Awareness Fundraiser, and suggested this opportunity be offered to all Village employees. This event is entitled *Making Strides Against Breast Cancer*, and is held in various locations throughout the nation, including Palm Beach County, to raise funds for breast cancer research and treatment. You conducted a survey within the department to judge other employee interest. During this time, you were advised that participation by Village employees in this event may be prohibited by the Code.

To your knowledge, none of the Palm Springs officials or employees is an officer or director of a local, state or national chapter of American Cancer Society, the sponsoring charitable organization.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care *will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:* (Emphasis added)
- (7) A civic group, union, social, *charitable*, or religious organization, or other not for profit organization *of which he or she (or his or her spouse or domestic partner) is an officer or director.* (Emphasis added)
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, *to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others.....* “corruptly” means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties. (Emphasis added)

Other than the misuse of office provisions involving public employees or officials who are officers or directors of charitable organizations and the prohibition against “corrupt misuse of official position”, the Code of Ethics has no direct prohibition against the use of on-duty Village staff for preparation, organization or assisting with a charitable event. It should be noted, however, that the code section permitting solicitation of contributions specifically prohibits the use of staff or other Village resources for solicitation of charitable contributions from vendors, lobbyists, principals or employers of lobbyists, by officials or employees on behalf of a non-profit organization.

Sec. 2-444. Gift law.

- (h) Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization.
- (1) Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, *is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited.* The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable. (Emphasis added)
- (1) To promote the full and complete transparency of *any such solicitation, officials and employees shall disclose, on a form provided by the Commission on Ethics,* the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the Commission on Ethics. The form shall be filed within 30 days from the occurrence of the event for which the solicitation was made, or if no event, within 30 days from the occurrence of the solicitation. (Emphasis added)
- (3) Officials and employees *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions* described in this subsection. (Emphasis added)

IN SUMMARY, employees of the Village may participate in the annual American Cancer Society's *Making Strides Against Breast Cancer* fundraiser, but may not solicit contributions for this event from vendors, lobbyists, principals or employers of lobbyists, while on-duty, or by the use of any municipal resource. This exception to the \$100 gift limit from vendors and lobbyists applies so long as there is no *quid pro quo* or other special consideration, including any special financial benefit to the employee or the person or entity being solicited. A solicitation log must be maintained and submitted to the ethics commission within 30 days of the fundraising event.¹ No solicitation greater than \$100 is permitted if made to a person or entity with a pending application for approval or award of any nature is before the Village. Further, employees or officials of the Village may not use their official position to give a special financial benefit to any non-profit organization if they (or their spouse) are officers or directors of the non-profit², and no employee may use their official position to corruptly secure any benefit for this organization, or for any person or entity.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/meb

¹ Pending COE approval, RQO 11-039 (public employees and officials who solicit for non-profit organizations must comply with the disclosure requirements of § 2-444(h)(2)).

² Pending COE approval, RQO 11-029, RQO 11-051 (municipal official may not use his or her official position, office or title to solicit charitable contributions if he or she is an officer or director of the non-profit organization)

XIV - STAFF SYNOPSIS OF PROPOSED ADVISORY OPINIONS:

RQO 11-037 Peter Elwell (re-submitted from July 7)

A municipal town manager asked whether a prohibited conflict of interest would arise if a town building official was required to review and give final approval to work completed by his brother whose company has been hired to perform the work of a Resident Inspector. Resident Inspectors are hired by private construction projects to ensure that all work is done properly and in accordance with town building codes. Resident Inspectors file weekly reports with the town building official. At the conclusion of the project, the town building official completes a final inspection of the work and, if appropriate, issues a certificate of completion or occupancy as applicable for the project.

Staff submits the following for COE approval: There is no prohibited conflict of interest per se under the code so long as the municipal employee does not use his official position to give his brother, his brother's company, or the landowner who employed his brother's company, a special financial benefit not shared by similarly situated residents employing other Resident Inspectors. The COE normally would not opine as to whether to prevent the appearance of impropriety, the Town manager should have the Resident Inspector report to a different town official. However, based upon the strong appearance of impropriety in this case, we concur with the Town's proposal that in cases involving this company in the role of Resident Inspector, the Resident Inspector should report directly to the Director of Building and Zoning or another Building Official.

RQO 11-047 Mark Hall

The Chief of Police for the Village of Palm Springs asked about reporting requirements and gift law obligations for various items he received while attending a statewide police chief's conference. His registration fee for the conference was paid for by the Village; however he personally paid the attendance fee for his wife and two children. He received a discounted hotel rate as negotiated by the conference organizers. While at the conference, he won a Blu-ray disc player valued at \$120 in a raffle and visited a "hospitality suite" with his wife valued at \$8.50. Neither the raffle nor the hospitality suite was sponsored by a vendor of Palm Springs. As part of the program, the Chief and his family accepted tickets, valued at \$50 per person, to attend a "NASCAR night" presented by Motorola, a vendor of Palm Springs. Finally, at an awards banquet hosted by the statewide police chief's association, Palm Springs received an award for "Excellence in Policing", including a wall plaque and a check for \$1000 payable to the police department. The value of the banquet was estimated to be \$55.47 per guest, but the Chief paid for his children and wife to attend and the association is not a vendor, principal, or employer of lobbyists who lobby Palm Springs.

Staff submits the following for COE approval: Any gift received by an employee in association with a conference related to their public position that is valued at greater than \$100, is either a reportable or prohibited gift. Registration fees paid by a municipality for an employee to attend a conference in their official capacity are specifically excluded from the definition of a "gift" and are not reportable.

Discounted hotel rates received in conjunction with conference attendance and part of a negotiated group rate are similarly not reportable gifts. The gift of the Blu-ray player and attendance at a hospitality suite, while reportable if valued at over \$100 are not prohibited because they were not provided by a vendor, lobbyist, principal or employer of a lobbyist. However, gifts valued over \$100, in the aggregate over the course of the calendar year, given by a vendor, lobbyist, principal or employer of a lobbyist are prohibited. Notwithstanding, if the employee accepts tickets or gifts in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist, the violation can be remedied by reimbursing the vendor or lobbyist the amount in excess of \$100 within 90 days. At all times, a gift of any value may not be accepted as a *quid pro quo* for official action, or in exchange for the past, present, or future performance or non-performance of an employee's public or legal duties.

RQO 11-050 Valencia Y. Stubbs

A municipal city attorney asked whether a sitting council member must abstain from voting on the re-appointment of her son as a Trustee for a municipal Firefighters' Pension Trust Fund. The Trustee position is voluntary and unpaid.

Staff submits the following for COE approval: The Code of Ethics specifically allows such appointments by a council in municipalities with fewer than 35,000 residents to boards without land-planning or zoning responsibilities. Since the Trust board does not have land-planning or zoning responsibilities, and the population of the City is less than 35,000, the appointment is not prohibited.

RQO 11-052 Mark Hall

The Chief of Police for the Village of Palm Springs asked whether Palm Springs employees may accept a 15% discount from a local restaurant that is not a vendor and does not lobby Palm Springs.

Staff submits the following for COE approval: public employees and official are not prohibited from accepting a discount from a local restaurant that is not a vendor, employer or principal of a lobbyist doing business with or lobbying their municipal government so long as there is no *quid pro quo* or special privilege or treatment given to the restaurant in exchange for, or because of the discount.

RQO 11-053 Peter Elwell

A Town Manager asked whether awards given to employees for outstanding performance or employee tenure are considered gifts for the purposes of the gift disclosure requirements and if the gifts themselves may be donated by a non-profit organization that is neither a vendor nor a principal or employer of a lobbyist of the Town.

Staff submits the following for COE approval: Employee awards for "outstanding performance" or recognition for length of service to the Town, are excluded from the definition of "gifts" and are exempt from all prohibitions and reporting requirements of the Gift Law. Notwithstanding, the Code of Ethics prohibits sponsorship of these awards by a non-profit organization if such sponsorship is based on any *quid pro quo* arrangement or the receipt of any special benefit resulting from an official act.

RQO 11-055 Peter Elwell

A Town Manager asked whether town employees could accept gifts donated to the town and distributed to employees through the use of a “blind draw” raffle.

Staff submits the following for COE approval: Town of Palm Beach employees are not prohibited from accepting gifts that have been donated to the town, so long as the persons donating the items are not vendors, lobbyists, or principals or employers of lobbyists and the gift is not accepted in exchange for the performance or non-performance of a legal duty or an official public action. If the gift is valued at more than \$100, it must be reported on the employees annual gift reporting form.

August 5, 2011

Peter B. Elwell
Town Manager, Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-037
Conflict of Interest/Misuse of Office

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on July 7 and again on August 4, 2011, and rendered its opinion at a public meeting held on August 4, 2011.

YOU ASKED in your letter dated June 16, 2011, whether the sibling relationship between a Town of Palm Beach Building Official and his brother, who has an ownership interest in a private firm hired by a landowner of commercial property to act as a Resident Inspector on a construction project, creates a prohibited conflict of interest under the Code of Ethics, where the Resident Inspector is required to submit inspection and compliance reports to the Building Official, and where the Building Official is responsible for final approval of the work completed.

IN SUM, there is no per se prohibited conflict of interest created under the Code of Ethics when a Town of Palm Beach Building Official completes his inspection and compliance assessment duties, even where the "Resident Inspector" is a sibling of the Building Official, and even where that Building Official has final authority to issue the necessary compliance documents, provided that in completing his official duties, the Building Official does not act or fail to act, or influence others to act or fail to act, in any manner that will result in a special financial benefit for his brother that is not shared by similarly situated members of the general public (other landowners represented by different resident inspectors). However, the issue of an appearance of impropriety is clearly present in such an arrangement. Although matters of internal policy and procedure are not normally subject to our jurisdiction we concur with your suggestion that this issue be dealt with by requiring this particular company acting as a Resident Inspector to report directly to the Town's Director of Planning, Zoning and Building who would assume the inspection and compliance duties of the Building Official.

THE FACTS as we understand them are as follows:

You are the Town Manager for the Town of Palm Beach (the Town). Under your Town Code, when a private party is engaged in any construction project within the Town that requires a permit, they are given the option of employing a private resident inspector to oversee the project for the purpose of ensuring that the work is done properly and complies with all building codes. This Resident Inspector is

further tasked with filing weekly reports with the head of the Town's Building Department (Building Official), as well as documenting compliance with the Town Building Codes. The Town's Building Official completes a final inspection of the work, and if appropriate, issues a Certificate of Completion or Certificate of Occupancy as applicable for the project. On one such commercial construction project, the landowners have hired a private company to act as their Resident Inspector. One of the partners/principals of this company is the brother of the Town's Building Official.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a *special financial benefit, not shared with similarly situated members of the general public*, for any of the following persons or entities: (Emphasis added)
 - (3) A *sibling* or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, *or the employer or business of any of these people*; (Emphasis added)
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, *to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others.* (Emphasis added)

IN SUMMARY, based on the facts you have submitted, there is no prohibited conflict of interest per se under the code based solely on a sibling relationship between a Building Official, charged with assuring compliance with building codes in the Town, when a landowner chooses to hire as their authorized Resident Inspector a private company in which the brother of the Building Official has an ownership interest, so long as the Building Official does not use his official position to give his brother, his brother's company, or the landowner who employed his brother's company, a special financial benefit not shared by similarly situated residents employing other Resident Inspectors. This would include the Resident Inspector allowing his brother to advertise and attract customers through the use of the Resident Inspectors name and position.

The Commission on Ethics normally would not opine as to whether, in order to prevent the appearance of impropriety, you as Town Manager should have the Resident Inspector report to a different Town official. While the sibling relationship, without providing a special financial benefit, does not constitute a prohibited conflict under the Code of Ethics per se, it does create a strong appearance of impropriety. This is especially true if the official acts of the Building Official are of a discretionary nature. In your advisory opinion request, you had indicated that the Town was contemplating having the Resident Inspector report to a different official of the Town when this potential conflict arises. We concur with your suggestion that in cases involving this company in the role of Resident Inspector, you have the Resident Inspector report directly to the Director of Building and Zoning, or use a different Building Official in that role.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/meb/gal

PROPOSED

August 5, 2011

Mark C. Hall, Chief of Police
Village of Palm Springs Police Department
230 Cypress Lane
Palm Springs, FL 33461

Re: RQO 11-047
Gift Law

Dear Chief Hall,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on August 4, 2011.

YOU ASKED in your email dated June 30, 2011, about the implications of the Palm Beach County Code of Ethics under the *Gift law*, as it relates to various items you received while attending the Summer Conference for the Florida Police Chiefs Association (FPCA), held in Orlando, Florida June 26 through June 28, 2011. Additional information was obtained by COE staff in a meeting with you in your office on July 6, 2011, and several email exchanges.

IN SUM, how Section 2-444, *Gift law*, affects you regarding your attendance at the FPCA conference depends on the value and source of any gifts given to you or family members at the conference. Under §2-444, a "gift" refers to the transfer of anything of economic value, without adequate and lawful consideration. A gift received from non-vendors and non-lobbyists of the Village of Palm Springs (the Village), is not prohibited, however it must be reported if its value exceeds \$100. Gifts received by any vendor or lobbyist of the Village that exceed \$100, annually in the aggregate, are prohibited, but the prohibited portion of the gift (that portion over \$100) may be returned to the giver within 90 days of receipt without violating the code. Any benefit you received that was paid for by the Village due to your sanctioned attendance in your official capacity, is not considered a gift, and is neither prohibited nor reportable. Lastly, any award for professional or civic achievement given to you or the police department in your official capacity as Police Chief is specifically exempted from the gift law under Section 2-444(g)(1)(c).

THE FACTS as we understand them are as follows:

You are the Chief of Police for the Village of Palm Springs, Florida (the Village). In your official capacity as Chief, you attended the Summer Conference for the Florida Chief of Police Association (FCPA), held in Orlando Florida from June 26 through June 28, 2011. Attending this conference with you were your wife and two children. Your conference attendance fee and hotel room for the conference were paid for by the Village, however you paid an attendance fee personally for your wife and children to FPCA. The

hotel room cost was \$120 per day, pursuant to the rate given the FPCA by the hotel. You advise that the normal rate for this hotel is \$250 per day, but the hotel often discounts rates for guests attending a conference held at this location. You and your family arrived one day early and you paid the discounted hotel fee for this additional day. According to the facts as given, the hotel rate was negotiated by FPCA, and the decision of the hotel to extend that rate to your family the day before the conference was sufficiently related to your official travel to the conference, even though you were not reimbursed by the Village for that particular day. Therefore, it is not considered a “gift” pursuant to §2-443(g)(1)(h), and is neither reportable nor prohibited.

While at the Conference, you won a Blue Ray DVD Disk Player valued at \$120 as a raffle door prize. This item was donated to FPCA for this raffle by a car dealership in Brennan, Georgia. This dealership is not a vendor for the Village, although they are listed on the Florida State bid contract from which you purchase vehicles as one of the available vendors. This is a reportable gift under the Code, but is not prohibited, because the sponsor is not a vendor of Palm Springs, nor a lobbyist or principal or employer of a lobbyist that lobbies the Village.

As part of the FPCA conference program, you and your family attended a “NASCAR Night” at a local restaurant. The sponsor of this event was Motorola. Motorola is a vendor of Palm Beach County, from whom you purchase your police radio equipment, and thus is an indirect vendor of the Village. The cost to the sponsor for this event is estimated to be \$15,000. There were approximately 300 attendees, meaning that the individual cost for yourself, your wife and children is estimated to be \$200 (\$50 per person - four people attending). Section 2-444 prohibits the acceptance of a gift by you from a vendor of the Village if the value exceeds \$100. Here, the value is estimated to be \$200 for your family’s attendance. You may reimburse Motorola for the amount in excess of \$100 to avoid a violation of the code of ethics.¹

You and your wife attended a sponsored “hospitality suite” during the conference. FPCA estimated that the sponsor’s cost was \$1,270 and the attendance was 300 people. The individual benefit to you and your wife based on 300 people in attendance is approximately \$8.50 (\$4.25 per person).² This gift is neither prohibited nor reportable based on its value, regardless of who sponsored this event.

Finally, at the awards banquet hosted by the FPCA, you were allowed to invite three (3) guests because your organization was scheduled to receive an award from FPCA for “Excellence in Policing.” The award included a wall plaque and a check for \$1,000 payable to the police department. The food and drink for the three (3) guests was paid for as part of this award through the FPCA, who are not vendors, lobbyists, principals or employers of lobbyists for the Village. Your food and drink was paid for by the Village through the attendance fee, and you paid for your wife and children through the additional fee for the conference. The value of the banquet was estimated to be \$55.47 per guest by the FPCA Executive Director, Amy Mercer. Since you attended in your official capacity, the cost of your meal was not a gift. You paid for your wife and children to attend this function; therefore no gift related issues arise.

¹ § 112.3148(7)(b), Florida Statutes. Compensation provided by the donee to the donor, if provided within 90 days after receipt of the gift, shall be deducted from the value of the gift in determining the value of the gift.

² § 112.3148(7)(j), Florida Statutes. The value of a gift provided to several individuals may be attributed on a pro rata basis among all of the individuals.

The “guests” you invited were paid for by FCPA. While these were guests of yours, a part of the award given to Palm Springs P.D. included FCPA’s invitation to bring up to three (3) guests to attend the banquet, as well as a \$1,000 check to the agency for professional achievement. As such, both benefits are exempt from the gift law.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Section 2-442 Defines lobbyist to mean “any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal...” and vendor as any person or entity who has a pending bid proposal, an offer or currently sells or leases property or goods or services to the municipality involved in the subject contract or transaction.

Sec. 2-444 (a)(1) prohibits a public official or employee from soliciting or accepting a gift of greater than \$100 in the aggregate for the calendar year from *“any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.”*

Sec. 2-444(f) requires any non-state reporting individual who receives a gift in excess of \$100 to report that gift on an annual gift reporting form. A gift is considered “the transfer of anything of economic value...without adequate and lawful consideration.” However, an exception to the gift law can be found in sec. 2-444(g)(1)c. which specifically states that the definition of gift “shall not apply to: Awards for professional or civic achievement;”

It should be noted that under sec. 2-444(e) no public official or employee may accept a gift of any value in exchange for the past, present or future performance of a legal duty or other official public action.

IN SUMMARY, any “gift” received by you or any member of your family³ while in attendance at this conference that is valued at greater than \$100, is either a reportable or prohibited gift under the PBC Code of Ethics. However, the code excludes certain gifts from the gift law requirements. A gift does not include attendance fees paid by the Village for your attendance at a conference in your official capacity, or any awards received for civic or professional achievement. Gifts valued at greater than \$100 (combined annually in the aggregate) from a vendor or a lobbyist, who lobbies, sells or leases to your municipality are prohibited, however the prohibited portion of the gift may be reimbursed within 90 days or receiving the gift.

While gifts from persons or entities who are not vendors or lobbyists within your municipality are not prohibited, a gift in excess of \$100 must be reported as required by the code. Finally, a person who accepts a gift they discover was prohibited by virtue of being from a vendor, lobbyist, principal or employer of a lobbyist of their public employer may avoid a violation of the code by returning to the donor the amount of the value that exceeds \$100. A gift of any value may not be accepted in exchange for the past, present or future performance of your official duties.

³ § 34-13.310(6)(a) Indirect gifts.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/meb/gal

PROPOSED

August 5, 2011

Valencia Y. Stubbs, Esq.
Office of the City Attorney
City of Riviera Beach
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

Re: RQO 11-050
Anti-Nepotism law

Dear Ms. Stubbs,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on August 4, 2011.

YOU ASKED in your email dated July 14, 2011, whether §2-443(c), of the Palm Beach County Code of Ethics, requires a sitting City of Riviera Beach Council Member to abstain from voting on the re-appointment of her son as a Trustee for the Firefighters' Pension Trust Fund, as established under §175.061, Florida Statutes. Additional information was obtained by staff via email on July 15, 2011.

IN SUM, under the facts you have presented, because the board position is voluntary and unpaid, it does not directly involve section 2-443(c), *Disclosure of voting conflicts*, as there is no special financial benefit gained by any of the persons or entities listed in 2-443(a)(1-7). In the case of a municipality with a population of greater than 35,000 people, the re-appointment to this position of a son by his parent who is a sitting City Council Member would violate section, §2-445, *Anti-Nepotism law*. However, §2-445 specifically allows such appointments by the council to a board that does not have land-planning or zoning responsibilities in those municipalities with less than 35,000 population. Since the Firefighters' Pension Trust Fund does not have land-planning or zoning responsibilities, and the population of Riviera Beach is less than 35,000, the appointment is not prohibited.

THE FACTS as we understand them are as follows:

You are an Assistant City Attorney for the City of Riviera Beach, Florida. In your official position, you have been asked whether a sitting Riviera Beach City Council Member may vote to re-appoint her son as a Trustee with the Firefighter's Pension Trust Fund, established in accordance with §175.061, Florida Statutes. Under this statute, a board of trustees for such a fund must have five (5) members, two (2) of whom are appointed by the governing body, which in this case is the Riviera Beach City Council. At present, one of these positions is filled by the son of a sitting City Council Member. The son will be under consideration for re-appointment as a Trustee in the future. When this occurs, the City Council will have a vote concerning the re-appointment of this position. Based on the 2010 Census data that

you provided, the City of Riviera Beach has a population of less than 35,000 people. In 2010, the population was 32,488.¹

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Sec. 2-445. Anti-nepotism law.

An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official. An individual may not be appointed...in or to a position in the county or a municipality if such appointment... has been advocated by an official...who is a relative or domestic partner of the individual or if such appointment...is made by a collegial body of which a relative of the individual is a member. *However, this section shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population.* (Emphasis added)

The Palm Beach County Code of Ethics mirrors state law in allowing an elected official to participate in the appointment of a relative to a position within the agency over which they exercise jurisdiction, when the population of a municipality is less than 35,000, so long as the appointment is not to a board with land-planning or zoning responsibilities.²

IN SUMMARY, under §2-445 of the Code of Ethics, it is not prohibited for a sitting city council member of a municipality with a population less than 35,000 to advocate or vote for the re-appointment of her son as a trustee to a board in the municipality over which the city council has appointment authority, so long as the appointment is not to a board with land-planning or zoning responsibilities. Furthermore, the Council member is not required to abstain from voting for such a re-appointment under these circumstances.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/meb/gal

¹ U.S. Census Bureau website (www.census.gov)

² §112.3135, Florida Statutes (2010)

August 5, 2011

Mark C. Hall, Chief of Police
Palm Springs Police Department
230 Cypress Lane
Palm Springs, FL 33461

Re: RQO 11-052
Gift Law

Dear Chief Hall,

The Palm Beach County Commission on Ethics (COE) considered our request for an advisory opinion, and rendered its opinion at a public meeting on August 4, 2011.

YOU ASKED in your email dated July 15, 2011 whether an offer of a 15% discount for all Palm Springs Village employees by the Friendly's Restaurant located within Palm Springs violates the Palm Beach County Code of Ethics.

IN SUM, the Friendly's Ice Cream, Inc. franchise located in Palm Springs is not a vendor, lobbyist, principal or employer of a lobbyist, lobbying or transacting business with the Village of Palm Springs (the Village). A discount to all similarly situated government employees does not violate the Palm Beach County Code of Ethics, provided that no "quid pro quo" or other benefit is offered or accepted because of any official public action taken, or legal duty performed or violated, by a public official or employee.

THE FACTS as we understand them are as follows:

You are the Chief of the Palm Springs Police Department. It has come to your attention that the local Friendly's Restaurant (Friendly's) is offering a 15% discount for food and beverages to all public employees of Palm Springs. Friendly's is a franchise of Friendly's Ice Cream, Inc. and is neither a vendor nor a lobbyist of Palm Springs. The 15% discount is an advertised offer and you have indicated there is no return consideration contemplated on the part of Palm Springs employees.

THE LEGAL BASIS for this opinion may be found in the following sections of the revised Palm Beach County Code of Ethics.

Section 2-444(g) defines a gift as the transfer of anything of economic value. A discount has economic value; therefore, the total amount discounted would be considered a gift under the code. Section 2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, "a gift with a value of greater than one hundred dollars \$100 in the aggregate for the calendar year from any person or business entity that ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or

leases to the...municipality.” Since Friendly’s is neither a vendor nor employer or principal of lobbyists within Palm Springs, this prohibition would not apply.¹

Section 2-444(e) prohibits the acceptance of any gift, for any amount, because of an official public action, or the performance, non-performance or violation of a legal duty. Therefore, there can be no official action or “quid pro quo” on the part of a public employee in exchange for the Friendly’s discount. Lastly, apart from the gift law prohibitions, section 2-443(a) of the code prohibits any use of official position or office that will result in a special financial benefit, not shared with similarly situated members of the general public, for the public employee, as well as relatives, outside economic interests and non-profit organizations in which the public employee is in a leadership position. Accepting a discount under the facts submitted here does not, per se, amount to a “use” of official position or office.

IN SUMMARY, based on the facts you have submitted, public employees and officials are not prohibited from accepting a discount from a local restaurant that is not a vendor, employer or principal of a lobbyist doing business with or lobbying their municipal government so long as there is no “quid pro quo” or special privilege or treatment given to the restaurant in exchange for, or because of the discount.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

¹ RQO 11-007 (off-duty attendance by town public safety employees and town officials where they received lunch and complimentary use of facilities in appreciation for their service from a non-vendor/lobbyist was not prohibited provided there was no “quid pro quo” in exchange for the gift)

August 5, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-053
Gift Law/Awards for Professional or Civic Achievement

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on August 4, 2011.

YOU ASKED two (2) separate, but related questions in your letter dated July 12, 2011.

Your first question was whether awards given to employees for outstanding performance (such as Employee of the Year, Officer of the Month, etc.) are considered "gifts" for the purposes of the gift disclosure requirements under §2-444(f) of the Palm Beach County Code of Ethics, where these awards are sponsored by either the Town, or a private entity.

Your second question was, whether a non-profit organization (the Fortin Foundation of Florida) which is neither a Town vendor, or a lobbyist, principal or employer of a lobbyist that lobbies the Town of Palm Beach, may donate funds for two (2) employee recognition programs, where awards are given to employees based on time of employment with the Town, or at retirement from employment with the Town. COE staff obtained additional information via email.

IN SUM, awards for professional or civic achievement are specifically excluded from the definition of "gift" within the Code of Ethics. As such, they are not subject to the gift law prohibitions and annual reporting requirements, regardless of whether they are sponsored by the Town or by private entities. Notwithstanding this exclusion, the donation of funds for sponsorship of these awards by any person or entity may not be based on the receipt of any *quid pro quo* or other improper special benefit from the Town, or from any employee or official of the Town of Palm Beach.

THE FACTS as we understand them are as follows:

You are the Town Manager of the Town of Palm Beach (the Town). You advised in your letter requesting an advisory opinion, that the Town offers various awards to Town employees for outstanding performance. Among these awards are, Employee or Officer of the Year, and Employee or Officer of the Month. These awards may be sponsored and presented by the Town, or by private entities within the

Town. They are awarded for professional achievement by the employees in each case, and are used to recognize “outstanding performance” by an employee.

The Town also has two (2) employee recognition programs that provide awards to employees based on specific length of service to the town, or upon retirement from employment with the Town. These recognition programs are sponsored through financial donations by the Fortin Foundation of Florida (Fortin), a non-profit entity that is not a Town vendor, lobbyist, principal or employer of a lobbyist that lobbies the Town. Through donations to the Town from Fortin, employees who reach a specified time of service (in five (5) year increments) or are retiring from employment with the Town, are able to select a gift from a catalog in recognition of this achievement.

No specific value was listed for these awards, nor was the actual amount donated by the sponsors who fund these awards. However, that information is not necessary to answer your questions.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Section 2-443(b), *Corrupt misuse of official position*, prohibits any official or employee from using his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, “corruptly” means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

This Section of the Code would specifically prohibit an employee of the Town from accepting any benefit, directly or indirectly, including awards for professional or civic achievement, if these sponsorships were corruptly linked in any way to a *quid pro quo* arrangement. *Corruptly* includes an act or omission that is done with a wrongful intent which is inconsistent the proper performance of public duties.

Section 2-444(g) defines a gift as the transfer of anything of economic value. Under the gift law, a public official may not solicit or accept, and a vendor or lobbyist of the official’s public entity may not give, directly or indirectly, a gift valued at greater than \$100. Permissible gifts in excess of \$100 may be subject to a reporting requirement. The facts that you submitted indicate that the private sponsorship for the two *length of service recognition programs* comes from non vendors/lobbyists. In this instance, even if considered gifts, they would not be prohibited under the code.

However, **Section 2-444(g)(1)(c)** excludes awards for professional or civic achievement from the definition of “gift” under the Gift law portion of the Code of Ethics. Therefore, as long as the benefit is truly an award for professional or civic achievement, and not a subterfuge to otherwise obtain a benefit for a wrongful purpose, the award is not considered a gift under the code.

IN SUMMARY, based on the facts and circumstances you have submitted, Town employee awards for “outstanding performance,” or recognition of their length of reputable service to the Town, are expressly excluded from the definition of “gifts” under Section 2-444(g)(1)(c) of the Gift Law portion of the Code of Ethics, and are exempt from all prohibitions and reporting requirements of the Gift Law. Nevertheless, Section 2-443(b) of the Code does prohibit the economic sponsorship of these awards by

private sponsors if such sponsorship is based on any *quid pro quo* arrangement, or the receipt of any special benefit resulting from an official act, inconsistent with the proper performance of the official's public duty.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/meb/gal

PROPOSED

August 5, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-055
Gift Law

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on August 4, 2011.

YOU ASKED in your letter dated June 30, 2011, whether it would violate the Palm Beach County Code of Ethics to allow gifts that have been donated to the Town of Palm Beach (the Town), to be distributed to individual employees of the Town, through the use of a "blind draw" raffle. Additional information was provided to COE staff via email.

IN SUM, you are not prohibited from distributing gifts to employees, where those items have been donated to the Town from persons or organizations that are not Town vendors, lobbyists, or principals, so long as there is no *quid pro quo* or other special consideration given to the donor, and the gift is not given for the past, present or future performance or non-performance of a legal duty or official action. If any item received by an employee is valued at more than \$100, it must be reported pursuant to the reporting requirements of the code.

However, a municipal official or employee may not accept, *directly or indirectly*, any gift with a value of greater than \$100 annually in the aggregate from any vendor, lobbyist or principal that lobbies, sells or leases to the municipality. In this case, a gift flowing through the Town Administration would still constitute an indirect gift. Gifts distributed in this manner with a value greater than \$100 in value would be prohibited if they came from a Town vendor, lobbyist or principal. In addition, the revised Code of Ethics prohibits a vendor, lobbyist or principal from giving such a gift to a person they know to be a public employee or official.

THE FACTS as we understand them are as follows:

You are the Town Manager for the Town of Palm Beach. Palm Beach has a policy against employees accepting gifts. On occasion, individuals or organizations will donate items of economic value, including such items as tickets to an event, admission fees to a charity golf tournament, or an offer of a particular free service from local business, to the Town. At times, these donations may be made by Town vendors,

and it is possible that on occasion these donations may come from people or organizations that are lobbyists, principals or employers of lobbyists who lobby the Town of Palm Beach.

The past practice of the Town of Palm Beach has been to distribute such donations to individual Town employees through a "blind draw" raffle. All Town employees are advised of the item that was donated, and if interested, they enter their name into the raffle. The names are placed into a container, and one is selected by chance to receive the item. If selected, and the gift is valued at more than \$100, the Town requires the employee to submit a "Town Acceptance of Favors and Gratuities Form," which documents their receipt of the gift item. You stated in your letter that, "through this process, we have ensured that no individual or organization could curry favor with any particular employee, that all employees (not just those in visible or influential positions) have an opportunity to enjoy the items that are donated, and that the receipt of valuable items is transparently documented."

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics:

Sec. 2-444. Gift law.

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept *directly or indirectly*, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity *that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist* who lobbies, sells or leases to the county or municipality as applicable. (Emphasis added)
- (a)(2) No lobbyist, vendor or principal or employer of a lobbyist that lobbies the county or a municipality shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (g) For the purposes of this section, "gift" shall refer to the transfer of *anything of economic value*, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, *without adequate and lawful consideration*. (Emphasis added)

IN SUMMARY, The Palm Beach County Code of Ethics does not prohibit a municipality from accepting and distributing gifts donated to the municipality by persons and entities who are not vendors or lobbyists of the municipality. Items distributed, with a value in excess of \$100 must be reported as required under the gift reporting provisions of the code.

A Town employee may not accept, directly or indirectly, a prohibited gift of a value in excess of \$100 if that gift was originally given by a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the Town. Likewise, a vendor, lobbyist or principal may not knowingly give a gift of a value greater than \$100 if they know the gift is for the benefit of a Town employee.

No gift may be given or accepted in exchange for the past, present or future performance of a legal duty or as a result of an official action.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Commission on Ethics

ASJ/meb/gal

PROPOSED