



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
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Executive Director

Alan S. Johnson

July 19, 2010

Commissioner Burt Aaronson
Palm Beach County Board of County Commissioners
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 10-004
Testimonial fundraising dinner

Dear Commissioner Aaronson,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on July 15, 2010.

YOU ASKED in your faxed letter of June 16, 2010, whether you, as a County Commissioner, may be honored along with Maury Kalish, who is on the Board of the Lake Worth Drainage District, at a dinner fundraiser for Temple Emeth in Delray Beach. You indicated that you would "not participate in any way in the Temple's fundraising efforts" for the event, and that "Temple representatives will not appear before the County Commission for any reason in the foreseeable future." You also indicated in a follow-up phone call that you are not an officer or board member of Temple Emeth.

IN SUM, the Ethics Commission opined that testimonial functions, held as a fundraiser honoring a public servant do not violate s. 2-443 of the Code of Ethics (prohibited conduct) except under limited circumstances wherein the honoree, spouse or domestic partner is an officer or director of the organization or the covered honoree otherwise uses his or her official position for financial gain.

The Ethics Commission further opined that the solicitation or acceptance of gifts from a lobbyist or any principal or employer of a lobbyist, made or accepted by you "or any other person or business entity... on your behalf...directly or indirectly," constitutes a violation of the gift law, specifically s. 2-444(a). Lastly, great care must be taken that all state statutes are adhered to, including strict requirements involving registration and disclosure.

THE LEGAL BASIS for the allowance of testimonial fund raisers for charitable or religious organizations provided the honoree or spouse/domestic partner is not an officer or director, is found in the following relevant section 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 or reasonable care will result in a financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities: (7) A nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.(emphasis added)



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Since neither you nor your spouse is an officer or director of Temple Emeth, the above prohibition does not apply. Of course, any use of official position, or the taking or failing to take an action resulting in financial benefit to you or any other entities or individuals enumerated in s. 2-443(1)-(6) would be a violation of the code as well.

The relevant section prohibiting solicitation or acceptance of gifts from a lobbyist or the principal or employer of a lobbyist is as follows:

Sec. 2-444 Gift law. (a) No county commissioner 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 (\$100.00) from any person or business entity that the recipient knows is a lobbyist or any principal or employer of a lobbyist. (emphasis added)

THE RATIONALE for limiting the manner of solicitations and donations is grounded in the desire to avoid the appearance that these solicitations and donations are made to obtain access or otherwise ingratiate the soliciting party to the honoree. In soliciting donations, it is not unusual for the charitable entity to sell advertising in a journal or other honorary publication as well as soliciting a business entity for the purchase of multiple tickets at significant cost. State ethics statutes prohibiting solicitation of gifts from lobbyists specifically exclude lobbyist gifts accepted on behalf of a governmental entity or charitable organization¹, and maintain strict reporting requirements; however, no such exclusion for charitable organizations or other limiting language appears in the Palm Beach County Code of Ethics.

In this instance, you have made clear that you will not personally take part in any solicitation. However, pursuant to s. 2-448(a) jurisdiction of the commission on ethics "with respect to advisory opinions rendered shall extend to all officials and employees, and all other persons and entities required to comply with the provisions of this code..." (emphasis added). In addition, knowingly violating s. 2-443 or s. 2-444(a) would subject the organization solicitors to criminal prosecution pursuant to s. 2-448(d). Therefore, those who do solicit on behalf of the organization must be careful not to solicit or accept gifts from lobbyists or suggest that non-lobbyist donors will receive financial benefit or obtain the good will of the honoree.

Albeit not within the jurisdiction of the Palm Beach County Code of Ethics, there is one more consideration that you will need to address. Section 111.012, Florida Statutes(2009) (Testimonials for public officers) states that strict records keeping must be maintained for any testimonial, including "any breakfast, dinner, luncheon, rally, party, reception, or other affair held to honor or raise funds on behalf of any elected public officer, except a campaign fund raiser..." Florida law requires that any organization hosting such a fundraiser

¹ "A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a...lobbyist who lobbies the reporting individual's or procurement employee's agency...if he or she knows or reasonably believes that the gift has a value in excess of \$100.00; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization..." F.S. 112.3148 (4)



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for a locally elected official file a notice of intent with the supervisor of elections, set up a "testimonial account...in a depository" and appoint a treasurer before any money can be accepted.

Detailed information regarding all donations and other activity within the depository account must be maintained by the treasurer. Notice of the testimonial must provide "the date and place the testimonial is to be held, the name and address of the person or persons in charge of the testimonial, the name and address of the officer in whose honor or on whose behalf the testimonial is to be held, the purpose for which the testimonial is to be held, and the purpose for which the funds raised are to be used."

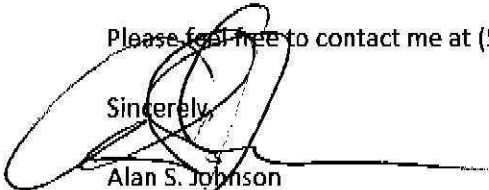
The state statute further requires a report be filed by the organization with the local elections supervisor by the person in charge within 90 days after the date the testimonial is held. Each report must contain the following information: the full name and address of each person who purchases one or more tickets or gives any money or donation with respect to such testimonial, together with the amount and date of the donation; a detailed list of entities receiving payment for expenses or entities receiving charitable funds. Lastly, violation of s. 111.012 by "any person or officer who holds a testimonial, or who consents to a testimonial being held..." or "who fails to dispose of the funds in the manner provided..." by statute is guilty of a first degree misdemeanor.

IN SUMMARY, the Palm Beach County Code of Ethics does not prohibit Temple Emeth from holding a fundraiser benefiting the Temple and honoring your public service. You must not benefit financially in any way and solicitors on behalf of the Temple cannot solicit or accept donations from lobbyists, their principals or employers, in excess of one hundred (\$100.00). Furthermore, solicitors should be careful not to suggest that non-lobbyist donors would receive any benefit from you in return for their participation. Lastly, s. 111.012 Florida Statutes must be adhered to by the honoree and charitable or religious organization.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inclusion of s. 111.012, Florida Statutes in this opinion is for informational purposes so that you and other members of Temple Emeth may avoid any violation of state criminal law. Inquiries regarding possible conflicts or requirements under state law should be directed to the State of Florida Commission on Ethics or the Attorney General.

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/gal