



# Palm Beach County Commission on Ethics

## Commissioners

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

## Executive Director

Alan S. Johnson

July 19, 2010

Glen J. Torcivia, Esq.  
Northpoint Corporate Center  
701 Northpoint Parkway, suite 209  
West Palm Beach, FL 33407



Re: RQO 10-008

Dear Mr. Torcivia,

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

YOU ASKED in your letter of July 6, 2010 whether the fact that your law firm represents a number of local governments within Palm Beach County would prohibit you or any member of your firm from serving as a volunteer counsel to the commission on ethics.

IN SUM, the Ethics Commission opined that under the Palm Beach County Code of Ethics the fact that your firm has contracts with entities that do business with the county does not per se disqualify you from volunteering in a county department. If the entirety of your work for local government is by contract, then you do not fit the definition of an official or employee of that governmental entity. Nor are you "a member, official, director, or employee" of these entities as contained in the code of ethics definition of "outside employer or business." However, if you or anyone in your firm is employed by any of these entities, then the entity would be considered an outside employer or business and you would be prohibited from serving the county unless an enumerated exception within the code exists. Based on the information you provided in a follow-up phone call on July 7, 2010, all relationships between your office and local government is by contract and not employment.

THE LEGAL BASIS for this opinion can be found in the following sections of the code:

### **Sec. 2-442 Definitions.**

*Official or employee* means any official or employee of the county, whether paid or unpaid, and includes all members of an office, board, body, advisory board, council, commission, agency, department, district, division, committee, or subcommittee of the county. The term "official" when used alone shall mean members of the board of county commissioners, and members of any advisory or quasi-judicial board created by the board of county commissioners.

*Outside employer or business* includes:



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- (1) Any entity, other than the county, of which the official or employee is a member, official, director, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. (emphasis added)

### Sec. 2-443. Prohibited conduct.

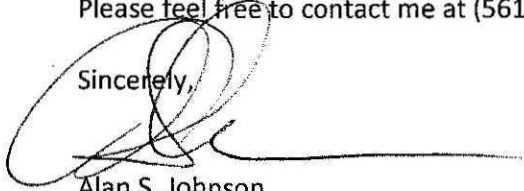
- (c) Prohibited contractual relationships. No official or employee shall enter into any contract or other transaction for goods or services with the county. This prohibition extends to all contracts or transactions between the county or any person or agency acting for the county, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. (emphasis added)

As a volunteer counsel for the COE, you would be considered an official of the County; however, as an independent contractor with a local governmental entity who is not a member, official, director, or employee of that entity, you would not be subject to the prohibited contractual relationship ban as contained in the code of ethics. Other prohibited conduct such as *misuse of public office* could come into play if in the course of your volunteer work with the COE issues involving your contract with other governmental entities became intertwined with your duties as a volunteer.

This opinion construes the Palm Beach County Code of Ethics, but is not applicable to any conflict under state law, including but not limited to s. 112.313 Florida Statutes, governing conduct of local government attorneys. 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  
Commission on Ethics

ASJ/gal