



Palm Beach County Commission on Ethics

CommissionersEdward Rodgers, *Chair*Manuel Farach, *Vice Chair*

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 3, 2010

Commissioner Karen Marcus
Palm Beach County Board of County Commissioners
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 10-012
Participation in Future Fundraising Events

Dear Commissioner Marcus,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on September 2, 2010.

YOU ASKED in your letter of July 29, 2010, whether friends of your daughter and son-in-law could participate in future fundraising events for the benefit of your son-in-law to defray medical expenses and how such a fundraiser would relate to your job as a county commissioner in Palm Beach County.

THE FACTS as we understand them are as follows: In 2008, your son-in-law, at age 31, suffered a life threatening stroke. He was in serious condition for many months. While fortunately his condition is improving, the process of recovery has been costly. You wrote that many of your daughter and son-in-law's friends would like to organize fundraising events to help defray the cost of continuing therapy. Such fundraising would invariably involve individuals who appear in front of the Board of County Commissioners. You have advised your daughter and son-in-law that it is your intention not to participate, ask for donations or even attend these fundraising events. In a follow-up telephone conversation on August 10, 2010, you indicated that you would take steps to avoid gaining any knowledge as to the identity of any donor or donors both before, during and after these events.

It should be noted that prior to the adoption of the Palm Beach County Code of Ethics and Commission on Ethics Ordinances, you had submitted this question to the State Commission on Ethics and received a written advisory opinion.¹

IN SUM, the Commission on Ethics opined that fundraising events for your son-in-law do not violate the Palm Beach County Code of Ethics provided you do not solicit or accept directly or indirectly any donations from lobbyists, their principals or employers of a value in excess of \$100 or otherwise use your official position or office to act or fail to take any action that results in a financial benefit to yourself or your daughter.

¹ CEO 09-21 December 9, 2009



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A LEGAL BASIS for allowing fundraisers on behalf of your son-in-law is found in the following relevant sections of the Palm Beach County Code of Ethics:

Article XIII, Sec. 2-444. Gift Law. (a) No County Commissioner . . . 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.

You have stated that you will not participate, ask for donations or attend any such fundraiser. You also indicated that your daughter and son-in-law live in their own home and that the fundraiser would not relieve you of any financial obligation that they may have. Therefore, you have created enough distance between the fundraiser and yourself to eliminate a conflict under this section.

Article XIII, 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 in which he or she knows or should know with the exercise of 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:

- (1) Himself or herself;
- (2) A member of his or her household . . . ;
- (3) A sibling or step-sibling, step-child², 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;

As indicated above, you will not be taking part in the fundraising event and will not attend. Your daughter is financially independent and does not live in your household. In addition, this section does not apply to in-law relations.

Article XIII, Sec. 2-443. (b) Disclosure of Voting Conflicts. A county official shall abstain from voting and not participate in any matter that will result in a financial benefit as set forth in subsections (a)(1)-(7) above.

You have by your intended actions sufficiently isolated yourself from the events of the fundraiser, particularly by not attending or reviewing lists of donors, to essentially eliminate any conflict of interest. In regard to you becoming aware of someone who has made a contribution after the fact, the Commission finds that the State Commission on Ethics opinion is instructive and adopts the following finding:

² A Scribner's error inadvertently omitted "child" in the current version of the Palm Beach County Code of Ethics. The Ethics Commission has approved and forwarded to the Board of County Commissioners a revision to the code inserting "child" into this subsection. A son-in-law is not directly subject to this prohibition.



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"You have asked for guidance with respect to the steps that should be taken in the event you inadvertently discover that someone has made a contribution. We recognize that it may not be possible for you to prevent someone from telling you that they donated to this cause, either because people would naturally expect you to be interested in the effort or because they might hope to curry favor from you by informing you of their contribution. Your after-the-fact awareness of a contribution having been made would not constitute a violation, because you still would not have "solicited and accepted" anything, but you are sensitive to the potential it could create for an appearance of impropriety. The law does not provide a mechanism for addressing this possibility, but in the event the topic of your son-in-law's illness comes up, it may be advisable to inform the individual that while you appreciate their interest, you have placed a self-imposed "cone of silence" around yourself with respect to the fundraising effort."³

IN SUMMARY, based on the circumstances you have described, specifically your absence of participation or attendance as well as the information provided that your daughter and son-in-law do not live with you, nor does the fundraiser relieve you of any financial obligations that they may have, it is the opinion of the Commission on Ethics that these fundraising activities on behalf of your son-in-law do not violate the Palm Beach County Code of Ethics. Keep in mind that you cannot allow your name to be used in any manner in connection with the fundraising event.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Understanding that you have already obtained an advisory opinion from the State Commission on Ethics, should you have any further inquiries in this regard, they 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

ASJ/gal

³ CEO 09-21, Supra., Page 4.