



Palm Beach County Commission on Ethics

Commissioners

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Alan S. Johnson

October 8, 2010

Ms. Laura Beebe
Deputy Director, Airports Business Affairs
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406

Re: RQO 10-013
Department of Airports Fuel Surcharge Proposal and
Potential Conflict of Interest Concerns by Members of the AAAB

Dear Ms. Beebe,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on October 7, 2010.

YOU ASKED in your capacity as Deputy Director, Airports Business Affairs on behalf of Aviation and Airports Advisory Board (AAAB) members in your email of August 4, 2010, whether a conflict of interest exists on the part of AAAB members voting on a fuel flowage fee at General Aviation (GA) Airports when board members own aircraft and purchase fuel at these airports. The Commission on Ethics received additional information from you regarding General Aviation fuel flowage, hangar space, tenants and airport operations in supplemental emails and documents received August 6, 10, 11, 16, and September 10, 20 and 28.

IN SUM, the ethics commission opined that airport users are considered "similarly situated members of the general public" for purposes of determining whether a voting conflict exists regarding a fuel flowage surcharge affecting only general aviation airport users, provided that the individual board member's benefit or loss does not significantly exceed other members of the affected class.

THE FACTS as we understand them are as follows:

The aviation and airports advisory board (AAAB) is a volunteer board appointed by the Palm Beach County Board of County Commissioners to review issues pertaining to airports within Palm Beach County and make recommendations to the commission. The Palm Beach County Department of Airports has proposed increasing fuel flowage fees at three general aviation (GA) airports: North County General Aviation, Palm Beach County Park Airport (Lantana) and Palm Beach County Glades Airport. The fuel surcharge varies between the three airports and would apply to all aircraft (public



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and private) with the exception of military aircraft. The fees would not apply to motor vehicle fuel. The amount of surcharge would vary between 3% and 5% per gallon. Some members of the AAAB own or lease aircraft and one member purchases fuel at the GA airports. Fuel is purchased from a fixed base operator who is a county tenant providing aviation services at the airports. The fixed base operator would collect the fee on the county's behalf and remit the fee to the county. These fuel farms are operated similar to gas stations (i.e., pay as you go). The aircraft owned by the AAAB member is a private aircraft.

Fuel flowage fees are standard in the industry and are charged at most airports, both international and regional, to cover a portion of the costs incurred to maintain the airports. The Department of Airports is recommending the adjustment to the fees. A fuel flowage fee has already been established for Palm Beach International Airport (PBI). The AAAB reviews recommendations of the Department of Airports as an advisory board to the Board of County Commissioners. There is not a specific formula for determining these fees, and fees can vary for a variety of reasons including the airport costs being recovered and the ability of the airport to support the fees.

The County's airports are self-sustaining and are not funded through the general county fund or ad valorem taxes. The Department of Airports is funded exclusively through airport revenue sources, including user fees, rentals, and state and federal grant sources. Any revenues derived from fuel flowage fees would be deposited in an airport account to be used for the maintenance and operation of the airports. The county is prohibited from diverting airport revenues into the general county fund pursuant to the county's federal grant assurance requirements. Any shortfall in operating expenses would not be made up by general revenues or taxes. Fees collected at an individual airport would remain with that airport.

The Department of Airports does not maintain information on the number of aircraft that purchase fuel from the fixed based operators. Information regarding the total number of gallons of fuel sold is maintained. For example, in May, 2010, approximately 83,000 gallons of aircraft fuel were dispensed at the three airports.

According to the "Florida Aviation System Plan, General Aviation Based Aircraft Forecast" statistics as of 2008, the following number of aircraft were based at the subject General Aviation Airports:

North Palm Beach County:	243
Palm Beach County Glades:	3
Palm Beach County Park:	<u>340</u>
Total Based Aircraft:	586



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Including tenants and itinerant aircraft (i.e., aircraft that fly into the airport but are not based at the airport), who purchase fuel at these general aviation airports, according to the Florida Aviation System Plan operations forecast, the total number of take-offs and landings for 2008 were as follows:

North Palm Beach County – 75,391
Palm Beach County Glades – 38,000
Palm Beach County Park – 145,000

Regarding the current membership of the AAAB, one member, Herbert Kahlert, personally owns an aircraft based at one of the 3 general aviation airports in question. The craft is used for both personal and business related reasons but is not operated as an aviation related business. Mr. Kahlert purchases on average 300 to 400 gallons of fuel per month.

THE LEGAL ISSUES presented to the commission involve the following relevant sections of the Palm Beach County Code of Ethics:

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: (*emphasis added*)

- (1) Himself or herself;

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.

The issue of prohibited conduct and voting conflict turns on whether a financial benefit is shared with similarly situated members of the general public. For the purpose of ordinance construction, the commission finds that a financial benefit includes both a private gain or loss. In this instance, any benefit or loss obtained through the fuel surcharge would apply to all users of the 3 airports. There is no additional burden placed on the general population if the surcharge is rejected.



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Therefore, the class affected by the fuel surcharge is limited to the approximately 600 base users and an unknown additional number of visiting craft (take-offs and landings) who actually purchase fuel from the fixed base operators. Since gain or loss rests universally with airport users, a prohibited financial gain would result only if there are circumstances unique to the voting official which would enable him or her to gain (or lose) more than the other members of the class.

In determining the number of individuals who would need to be affected to transform a personal gain or loss into a gain or loss shared with similarly situated members of the general public, there is no bright line. The Florida State Code of Ethics s.112.3143(3) Florida Statutes, similarly prohibits a county, municipal, or other local public officer from voting "in an official capacity upon any measure which would inure to his or her special private gain or loss. . ." . A number of opinions issued by the Florida Commission on Ethics interpret "private gain or loss" in a consistent manner with "financial benefit, not shared with similarly situated members of the general public" and these opinions are based upon the size of the class of persons who stand to benefit from the measure.¹

We agree with this interpretation. The determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public therefore turns on the size of the class of persons who stand to benefit from the measure. Where a class is large, a prohibited financial gain would result only if there are circumstances unique to the voting official which would enable him to gain more than the other members of the class. However, where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.²

In CEO 93-12 (April 22, 1993), the Florida Commission on Ethics found that a member of the Board of Trustees of the St. Petersburg Fireman's Retirement System, who was himself a city firefighter and a recipient under the pension plan, was not required to abstain from voting on an issue involving the handling of a pension lawsuit "that could benefit or harm himself as a member of the class action." The State Commission opined as follows:

"In past opinions, we have focused on the size of the group or class of persons to be affected by a measure in determining whether the gain or loss to a public officer within the group would be "special" within the meaning of the provisions of section 112.3143, unless there are circumstances that are unique to the officer which would distinguish the public officers gain or loss from that of other members of the group. . . . Here, it appears that all members of the group (civil lawsuit class) containing the Trustee are similarly situated, that is, they all stand to gain in the same way regarding firefighter retirement benefits. Therefore, we find based on our precedent, that 297 persons is not so small a class that gain to the Trustee as an individual

¹ CEO 90-71 (October 19, 1990), CEO 91-72 (December 6, 1991), CEO 76-62 (March 16, 1996)

² CEO 77-129



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member of the class would be "special" within the meaning of the statutory sections set forth above."

IN SUMMARY, based on the facts and circumstances provided, it is the opinion of the Ethics Commission that the financial benefit or loss sustained by Mr. Kahlert is "shared with similarly situated members of the general public" and that the amount of fuel purchased (300-400 gallons monthly) does not constitute a unique circumstance wherein his personal gain or loss exceeds significantly other members of the affected class of airport users.

You currently have only one AAAB member who owns a craft and purchases fuel at the affected general airports. A finding of no unique circumstance is limited to the facts presented in this request.

This opinion construes the Palm Beach County Code of Ethics ordinance. While reference has been made to the State of Florida Code of Ethics, specifically s.112.3143 voting conflicts, it is not applicable to any potential 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/gal