



Palm Beach County Commission on Ethics

Commissioners

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

Alan S. Johnson

September 3, 2010

Ms. Andrea Rubin
Youth Services Supervisor
West Boca Branch Library
18685 State Road 7
Boca Raton, FL 33498

Re: RQO 10-014
Presenting a 30 minute Program at a Birthday Party

Dear Ms. Rubin,

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

YOU ASKED in your email of August 5, 2010, whether you, as a Palm Beach County Library employee, could present a 30 minute program for a library patron's child's third birthday party. In your initial request, you mentioned that you were initially offered payment, which you declined, and your request involved a free presentation.

IN SUM, the ethics commission opined that there is no prohibition against an employee participating for free in a private social event at the request of a library patron, provided that county facilities or other property is not used for the program.

THE FACTS as we understand them are as follows: You are an employee of the Palm Beach County Library System, and as such are a public employee within the meaning of the Palm Beach County Code of Ethics. As part of your duties, you participate in a 30 minute "story time" program for children at the library. The program includes reading stories and doing dances for children.

Recently you were approached by a library patron who asked if you could present a 30 minute program, much like the one that is done at the library, for her child's third birthday party. She offered to pay you, which you declined. At the time, you indicated that you might consider participating in the event for free. The party is scheduled to be held in a party room in a county park, and it is your assumption that there would be other three year old children in attendance accompanied by their parents. In addition, you stated that you would not be using any of the materials owned by the library and not available specifically to patrons. In considering your participation, you declined to accept payment as you were concerned that this would "count as outside employment that I would need to report". Subsequently, you decided not to participate in this birthday party.

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



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Sec. 2-442. Definitions. Outside employer or business includes: (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 for goods sold or produced.* (emphasis added)

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.

Sec. 2-443. (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)

Clearly if you are volunteering as entertainment for a child's birthday party and are not receiving a financial or other benefit, you would not be in a position to misuse your public employment under the code. Even if you were to be paid for your performance at the party, unless the patron herself had a contractual relationship with the county (prohibited contracted relationship) or you otherwise used your official position or office to obtain a financial benefit not shared with similarly situated members of the general public (misuse of public office or employment) you would not be in violation of the Palm Beach County Code of Ethics.

It should be noted that you took no action to solicit or otherwise encourage library patrons to retain you for performance at children's birthday parties, nor would your participation involve the use of county facilities, materials or be performed without authorization during work hours.

IN SUM, it is the opinion of the Commission on Ethics that your participation, paid or unpaid, in a child's birthday party for the benefit of a patron of the library, where: (1) you in no way solicited this offer in your official capacity or while on duty at the public library, and (2) you would not be using library facilities or property, and (3) the soliciting patron does not have contracts with the county, would not be in violation of 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 any conflicts under state law should be directed to the



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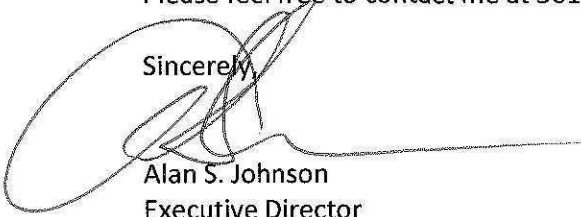
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State of Florida Commission on Ethics. In addition, this opinion does not construe any obligation you may have under merit rules or any other county requirements regarding outside employment.

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