



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

October 8, 2010

Ms. Vianey S. Yurkovich
Palm Beach County Division of Senior Services
Senior Aide Program Coordinator
3680 Lake Worth Road
Lake Worth, FL 33461

Re: RQO 10-021
Raffles and Senior Centers

Dear Ms. Yurkovich,

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

YOU ASKED, in your e-mail of September 13, 2010, whether county vendors were permitted to conduct raffles of donated items at open houses taking place at county run senior centers.

IN SUM, while the Palm Beach County Code of Ethics does not specifically prohibit vendors from conducting raffles to the public in county operated senior centers, any benefit obtained by a county employee from the raffle may constitute a misuse of public office or employment under section 2-443 or an improper gift under section 2-444. In addition, with the exception of charitable nonprofit organizations under s. 849.0935, Florida Statutes, "any lottery, drawing for the distribution of a prize or prizes by lot or chance" is prohibited under s. 849.09, Florida Statutes, and may constitute a crime.

THE FACTS as we understand them are as follows:

The Palm Beach County division of Senior Services runs several senior center facilities owned by Palm Beach County. The facilities are staffed by county employees. From time to time, these county-run facilities host "open houses" to publicize services and programs offered at the senior centers. Senior oriented vendor companies including healthcare organizations such as Humana, Oasis Home Care, various home health agencies and assisted living agencies, as well as nonprofit organizations such as Area Agency on Aging attend open houses and distribute brochures and handouts about their programs to the public, including senior center participants and care givers. These vendors have requested permission to bring donated items to raffle to the public at the county facility open houses. The raffle would be conducted by the vendors and not county staff. County staff would be prohibited from participating in the raffle or accepting any gifts from the vendors. The items subject to the raffle would include "pens, bubble bath, spa soaps, pill holders, \$10 gift certificates to Publix, magnifying glasses, etc." The vendor would insert their business card in the gift bag containing the raffle prize and thereby use it to market their company. You indicated that there would be no charge to participants and that



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

the tickets would be distributed by the vendors who would then call out the winning numbers and distribute the prizes.

Staff has refused to allow these raffles at the Palm Beach County Senior Center open houses. As Senior Aides Program Coordinator for the Palm Beach County Division of Senior Services, you have submitted this request for an advisory opinion to determine whether your refusal is appropriate and in accord with the Palm Beach County Code of Ethics.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Sec. 2-443(a) prohibits an employee from using their office for financial benefit for himself or herself. Clearly, even if the raffle were deemed appropriate, no Division of Senior Services employee may seek or obtain a benefit in exchange for permitting such a raffle. Nor can a county employee accept any gift in exchange for permitting a raffle without running afoul of section 2-444(c) prohibiting the offer or acceptance of a gift in exchange for the performance or non performance of an official public action or legal duty.

Notwithstanding the fact that the Palm Beach County Code of Ethics does not specifically bar a raffle conducted by for-profit vendors at a county facility, s. 849.09, Florida Statutes, prohibits any person from setting up, promoting or conducting a lottery for money or anything else of value.¹

Florida law does exempt charitable, nonprofit organizations from the prohibition of s. 849.09, Florida Statutes; however, based on your facts, most if not all of the county vendors are for-profit companies. While it is outside the jurisdiction of this commission to opine as to whether the aforementioned raffle violates state criminal laws², it is and should be a matter for concern.

¹ 849.09 Florida Statutes

(1) It is unlawful for any person in this state to:

- (a) set up, promote, or conduct any lottery for money or anything else of value;
- (b) dispose of any money or other property of any kind whatsoever by means of any lottery;
- (c) conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, poster, pamphlets, radio, telegraph, telephone, or otherwise;
- (d) aid or assist in setting up, promoting, or conducting of any lottery or lottery drawing, whether by writing, printing, or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing;

² Op. Atty. Gen. 060-117, July 15, 1960 (promotion scheme by the municipal gas department of the City of Clearwater, whereby participation in this contest is secured by a person simply mailing his address to the municipal gas department and thereby becoming eligible to win a \$1000 cash prize to be awarded by a drawing, contained all three elements of a lottery, including the element of consideration which was present through the possible use of the entries to obtain a ready mailing list of potential customers)



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

According to county administration, there is no specific written county policy governing raffles in county facilities. Regardless of whether or not the proposed raffle violates county policy or state lottery laws, we are aware of no legal requirement that the Division of Senior Services permit such activity at county facilities. You have denied the request and refused to allow the raffle at your county facilities. Your prime reason for doing so was to avoid the appearance of impropriety that might arise from vendor raffles being conducted for the purposes of marketing their businesses at county run senior centers.

IN CONCLUSION, county employees may not benefit by permitting a lottery, nor may county employees accept gifts from the vendors in exchange for any official public action, legal duty performed or legal duty violated by the employee. In addition, for-profit vendor lotteries are prohibited by state law. Lastly, limiting vendor marketing on county property does not violate the Palm Beach County Code of Ethics or related ordinances.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law. Inclusion of s. 849.09, Florida Statutes, in this opinion is for informational purposes so that you and the county vendors may avoid any violation of state criminal law. Inquiries regarding possible conflicts 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 if I can be of any further assistance in this matter.

Sincerely,


Alan S. Johnson
Executive Director

ASJ/gal