



Palm Beach County Commission on Ethics

Commissioners

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Robin N. Fiore
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Executive Director

Alan S. Johnson

October 8, 2010

Thomas J. Baird, P.A.
11891 U.S. Highway One, Suite 100
North Palm Beach, FL 33408

Re: RQO 10-023
Dennis Koehler

Dear Mr. Baird,

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

YOU ASKED in your letter of September 21, 2010, and in your capacity as general counsel for the Westgate/Belvedere Homes Community Redevelopment Agency (Westgate CRA), whether one of the CRA's appointed commissioners may be the beneficiary of a fundraising event to help defray medical expenses. Those who may contribute include individuals or businesses that have appeared or may appear in the future before the Westgate CRA. On October 5, 2010 the ethics commission received a letter from your client stating that he had decided to resign from the Westgate CRA. Pursuant to the Commission on Ethics Rules of Procedure, Section B 2.4 (f), once submitted, an advisory opinion request may not be withdrawn by the submitting party. Therefore, please find the following response to your original request.

IN SUM, the Commission on Ethics opined that individuals or entities soliciting donations on behalf of an advisory board member are prohibited from soliciting or accepting any gift with a value greater than One Hundred (\$100) Dollars from lobbyists, or any principal or employer of a lobbyist who lobbies the recipient's advisory board. In addition, as a public official, he is required to abstain from and disclose any voting conflicts and not participate in a matter involving a conflict of interest. Lastly, the official would need to take great care to avoid using his official position or office to take or fail to take an action as a result of any permissible gifts or donations made on his behalf at a fundraiser.

THE FACTS as we understand them are as follows:

You represent Dennis Koehler in your capacity as general counsel for the Westgate/Belvedere Homes Community Redevelopment Agency (Westgate CRA). The Westgate CRA is an independent special district of Palm Beach County. The Board of County Commissioners created the Westgate CRA in 1990 and appoints the 7 member board of commissioners. One of the Westgate CRA appointed commissioners is Dennis Koehler, Esquire.

Recently, Mr. Koehler was diagnosed with a serious illness and has been undergoing treatment. He has incurred and will continue to incur substantial medical expenses. Friends and colleagues of Mr. Koehler have organized fundraising events to help defray the costs of this continued treatment. The fundraising events are ongoing and contributors may include individuals or business entities that have appeared or



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may appear before the Westgate CRA in the future. The donations to Mr. Koehler will be accepted by the Friends of Veterans, which is a 501-C-3 tax exempt organization. Mr. Koehler has not personally solicited, nor will he be soliciting donations from individuals or business entities. Nor will Mr. Koehler be taking part in the fundraising events in any way. As Mr. Koehler is concentrating on his medical treatment, he has authorized you to submit this request on his behalf.

THE LEGAL BASIS for this opinion involves several sections of the Palm Beach County Code of Ethics.

Section 2-443 prohibits a public official from using his or her official position or office to take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or reasonably should know would result in a financial benefit not shared with similarly situated members of the general public. In essence, Mr. Koehler, by accepting donations, needs to take great care to avoid acting or failing to act in a manner that would appear to favor the donors.

The relevant section prohibiting solicitation or acceptance of gifts from a lobbyist or the principal or employer of a lobbyist reads as follows:

Section 2-444. Gift Law. (b) No advisory board member, or any other person 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 lobbyist, or any principal or employer of a lobbyist, who lobbies the recipient's advisory board, or any county department that is subject in any way to the advisory board's authority. (Emphasis added)

The plain language of the code prohibits the acceptance of gifts greater than One Hundred Dollars (\$100.00) from lobbyists, or their principals or employers. No differentiation is made between religious, charitable or other 501-C-3 tax exempt organizations. Nor does the code distinguish personal fundraising events, notwithstanding the good work or good intentions of the participants.

Lastly, Section 2-443 (b) requires that county officials abstain from voting and not participate in any matter that will result in a financial benefit to specified persons and entities, including themselves. You had mentioned in your letter that contributors may include individuals or business entities that will appear in the future before the Westgate CRA. Notwithstanding any other section of the code, should Mr. Koehler continue on the CRA board, he would need to be cognizant of specific potential conflicts involving donors taking part in these fundraising events.

THE RATIONALE for limiting the manner of solicitations and donations is grounded in the desire to avoid the appearance that these solicitations and donations are made to obtain access or otherwise ingratiate the soliciting party to the donee. While the ethics commission may completely understand and sympathize with the purpose and goals of a fundraising event, the limitations imposed by the Code of Ethics are clear and unambiguous.



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Previously, this issue was visited in the context of testimonial fundraisers for charitable or religious organizations¹. The commission found that the prohibition against accepting gifts with a value greater than One Hundred Dollars (\$100.00) from lobbyists, their principals or employers, applied to the honoree of a fundraising event. Although not involved in the solicitation, it was determined that under the Palm Beach County Code of Ethics, solicitations by the charitable organization were effectively being made on the official's behalf. In the case of a fundraiser held for the specific purpose of defraying the medical expenses of a county official, the limitations of the code clearly apply.

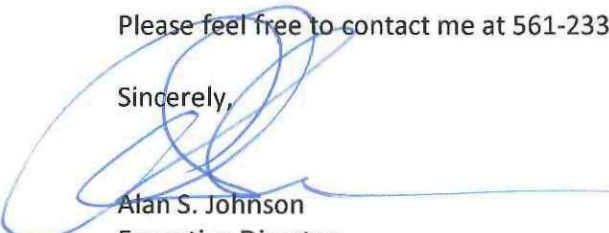
We recognize the longstanding commitment and contributions that Mr. Koehler has made to the people of Palm Beach County and his outstanding record of dedicated service over many years. The ethics commission wishes every success to Mr. Koehler in his treatment. It cannot, however, carve out exceptions based upon the worthiness of the cause.

IN SUMMARY, if he remained on the Westgate CRA, notwithstanding the fact that Mr. Koehler would not be participating in any fundraising event held on his behalf by the Friends of Veterans, a 501-C-3 tax exempt organization, if donations were solicited or accepted in excess of One Hundred Dollars (\$100.00) from any lobbyist, principal or employee of a lobbyist who lobbies the recipient's advisory board or department, the donations would be in violation of section 2-444(b) of the Palm Beach County Code of Ethics. Under these circumstances, the only way to avoid the prohibitions under the code is for Mr. Koehler to resign his official position which he has decided to do.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any 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 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/gal

¹ BCO 10-004 and BCO 10-011 advisory opinions