



# 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

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October 8, 2010

Bob Nichols, CEO/Executive Director  
Grassy Waters Preserve  
8264 Northlake Blvd.  
West Palm Beach, FL 33412

Re: RQO 10-024  
Non-profit fundraiser/donor gifts

Dear Mr. Nichols,

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 17, 2010, whether vendor sponsors of your annual fundraiser "gala and golf classic" event can invite county employees or officials as their guests without violating code of ethics gift prohibitions.

IN SUM, the Commission on Ethics opined that officials and employees may not accept gifts in excess of \$100.00 from donors who are lobbyists, principals or employers of lobbyists. This prohibition applies to direct and indirect expenditures where the expenditure is provided with the intent to benefit the official or employee. Lastly, the value of the gift is assessed using the actual cost to the donor. Valuation is assessed at face value and on a daily or per event basis, whichever is greater.

THE FACTS as we understand them are as follows:

Grassy Waters Preserve (the Preserve) is a 501-C-3 non-profit organization which supports the environmental education and recreation programs of Grassy Waters Preserve, owned and operated by the City of West Palm Beach. The mission of this organization is to promote and assist the city's water catchment area/preserve with public outreach, website operation and other projects and programs offered to the general public at the Preserve. Operating expenses are reliant largely upon donations and fund raising efforts.

For the past 12 years, the Preserve has held an annual Gala and Golf Classic fund-raiser at IBIS Golf and Country Club. The 13<sup>th</sup> such event is scheduled for October 15-16, 2010. The event is generally underwritten by sponsorships from many different corporate entities. These sponsors often invite local, state and nationally elected officials and employees to participate in the event as their guests.



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The Preserve offers package prices to companies who wish to participate. These packages include a foursome of golf and a table for 10 people at the Gala dinner the night before the tournament for \$1500.00. The Preserve costs are approximately \$90.00-\$96.00 dollars per person. Individual tickets to the Gala dinner only are \$75.00.

The main sponsor of the Gala does business with the county and has pending proposals in process for county government work.

THE LEGAL BASIS for this opinion may be found in sec. 2-444 or the Palm Beach County Code of Ethics as well as s. 112.3148 Florida Statutes by reference.

Sec. 2-444(a) prohibits a county commissioner or employee from soliciting or accepting directly or indirectly, any gift with a value greater than one hundred dollars (\$100.00) from any lobbyist, or any principal or employer of a lobbyist. In the case of advisory board members, section (b) limitations extend to a Lobbyist, principal or employer, "who lobbies the recipient's advisory board, or any county department that is subject in any way to the advisory board's authority."

Section (c) prohibits the acceptance by an official or employee of any gift, regardless of value, because of an official public act or legal duty performed or violated.

Section (d) requires that all allowable gifts (non-lobbyist and non-exempt) in excess of one hundred dollars (\$100.00) be reported. For those persons required to report pursuant to state law, reference is made to s. 112.3148, Florida Statutes as to the manner of compliance.

The ethics commission has previously addressed valuation issues and has determined that for purposes of valuation, s.112.3148 is relevant.<sup>1</sup> Of significance here, subsection (7)(h) and (i) provide the following:

- (h) Entrance fees, admission fees, or tickets shall be valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.
- (i) Except as otherwise specified in this section, a gift shall be valued on a per occurrence basis.

Lastly, Florida Administrative Code, Rule 34-12.190 provides guidance on indirect expenditures:

- (1) Where an expenditure is made to a person other than the agency official or employee by a lobbyist or principal, where the expenditure or the benefit of the

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<sup>1</sup> RQO 10-005



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expenditure ultimately is received by the agency official or employee, and where the expenditure is provided with the intent to benefit the agency official or employee, such expenditure will be considered a prohibited indirect expenditure to the agency official or employee.

- (3) Factors which the Commission will consider in determining whether a prohibited indirect expenditure has been made include but are not limited to:
- (b) The existence or nonexistence of any relationship between the lobbyist or principal and the third person, independent of the relationship between the lobbyist or principal and the agency official or employee, that would motivate an expenditure to the third person;
  - (c) The existence or nonexistence of any relationship between the third person and the agency official or employee that would motivate the expenditure.

THE RATIONALE for limiting gifts to employees and officials from lobbyists is grounded in the desire to avoid the appearance that these gifts are made to obtain access or engender the good will of those employees and officials. So long as a gift does not exceed \$100.00 in value and is not given because of an official action or legal duty to be taken, performed or violated, there is no prohibition within the code. Of course, there is no limitation on the value of a gift, provided that it is not given by a lobbyist, principal or employer of a lobbyist. If allowable, the code of ethics would require that the gift be reported, if not exempt from reporting requirements.

The issue presented primarily involves valuation. You have indicated that the Preserve sells individual tickets to the Gala dinner at \$75.00. Corporate donors purchase tables for 10 including the dinner and a tournament foursome for \$1500.00. This price reflects \$150.00 per person. The ethics commission interprets valuation consistently with the state statutes and as such, the cost of the event may not be divided so as to defeat the intent of the code.

IN SUMMARY, a county commissioner or employee who receives a space at a donor table from a lobbyist, principal or employer of a lobbyist has received a prohibited gift of \$150.00. Likewise, an advisory board member has received a prohibited gift of \$150.00 if the donor "lobbies the recipient's advisory board or any county department that is subject in any way to the advisory board's authority." Regarding tickets to the dinner that are not attached to a donor table, the cost of \$75.00 would not be prohibited under the threshold as contained in sec. 2-444 of the code. However, a second ticket provided to a spouse or other individual on behalf of the employee or



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official is considered as having been provided with the intent to benefit the covered individual.<sup>2</sup> In this instance, the employee or official would be required, at the least, to pay for the second ticket.

It cannot be over emphasized that any gift, of whatever amount, must not be accepted in exchange for an act or omission on the part of the employee or official, and all allowed gifts over \$100.00 and not otherwise exempt under sec. 2-444((e)(1) must be reported.

This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances that you have submitted. It 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 if I can be of any further assistance in this matter.

Sincerely,

Alan S. Johnson  
Executive Director

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<sup>2</sup> CEO 91-04 (for purposes of gift reporting, travel expenses for official's wife are charged to official), CEO 05-05 (official must report additional admission provided by city enabling official to invite his spouse)