



Palm Beach County Commission on Ethics

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October 26, 2010

Jean Matthews, Senior Planner
Palm Beach County Parks and Recreation Department
2700 6th Avenue South
Lake Worth, FL 33461

Re: RQO 10-027
Public-private partnerships/grants

Dear Ms. Matthews,

Your request for advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your e-mail of September 30, and October 1, 2010, whether you or other members of the Palm Beach County Parks and Recreation Department, may facilitate an application for private grant money between the Special Olympics of Palm Beach County and the Lost Tree Village Charitable Foundation in order to construct a shade structure over a portion of the John Prince Memorial Park Therapeutic Recreation Center swimming pool. Additional information was provided in your e-mail and attachment of October 4, 2010.

IN SUM, in your official capacity as a Palm Beach County employee, you may assist a non-profit organization in obtaining improvements to county facilities utilized by the organization, by identifying and facilitating grants from private charitable organizations, provided that you or any other person or entity as described in sec. 2-443(a)(1)-(7) do not personally benefit financially from the transaction.

THE FACTS as we understand them are as follows:

In 2007, the Palm Beach County Parks and Recreation Department dedicated the Club Managers Association of America Therapeutic Recreation Complex at John Prince Memorial Park. The complex features among other amenities, a 9,750 square foot aquatic center. The Therapeutic Recreation Center is the premier training facility for over 1,000 local Special Olympics athletes.

In August, 2010, Dennis Eshleman, Parks and Recreation Department Director, contacted the Lost Tree Charitable Foundation in support of the grant application and in "partnership with the Palm Beach County Special Olympics." This was a jointly supported application for a \$65,000.00 grant to cover the cost of a 35' x 35' shade structure for the western end of the facility swimming pool. The intended purpose of the structure was to "protect participants from overexposure to the sun's harmful rays."

As part of your official duties, you research potential grants and pass them along to non-profit entities for application. You found this specific grant and forwarded the information to Special Olympics. You also serve as the Development Review Officer (DRO) for Parks and Recreation. As DRO you review proposed land use



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and zoning changes to assure applications comply with the Parks and Recreation Department provision of the Unified Land Development Code (UDLC). Your involvement in the grant application process was to assist in the production of graphics (cover, photos, map, etc.), assist in the grant cover letter, and proof read the application. All assistance was in your capacity as a Palm Beach County employee. You are not an officer or board member of either non-profit organization, nor will you benefit personally from the process.

THE LEGAL BASIS for allowing county employees to utilize public/private partnerships to benefit the public can in part be found in sec. 2-443(c). The prohibited contractual relationships section does "not apply to employees who enter into contracts with Palm Beach County as part of their official duties with the county." Insofar as your assistance with this project, any relationship with the donor non-profit organization would be within your official capacity. Likewise, although the grant application is in partnership with Special Olympics of Palm Beach County, you are not acting directly or indirectly through a prohibited outside employer or business.

Additionally, based upon the facts you have submitted, you have not benefited personally from this transaction, nor has there been a financial benefit, "not shared with similarly situated members of the general public" to any persons or entities listed in sec. 2-443(a)(1)-(7). Most notably, you are not an officer or board member of either non-profit organization. Lastly, sec. 2-444(c), prohibiting acceptance of a gift in exchange for an official act, is inapplicable pursuant to section (e). For the purposes of the gift law, "gifts solicited by county employees on behalf of the county in performance of their official duties for use solely by the county in conducting official business" are excluded as gifts under sec. 2-444(e)(1)e.

IN SUMMARY, your participation and facilitation of private donations for public use is not a violation of the Palm Beach County Code of Ethics, notwithstanding the fact that the grant money is given for the benefit of a non-profit organization utilizing public facilities, so long as you are not an officer or board member of the affected organizations and do not financially benefit directly or indirectly in violation of sec. 2-443(a)(1)-(7).

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

ASJ/gal