



Palm Beach County Commission on Ethics

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October 26, 2010

Charles R. Suits, Administrative Assistant
Palm Beach County Board of County Commissioners
P.O. Box 1989
West Palm Beach, FL 33402

Re: RQO 10-028-OE
Outside employment with Florida Atlantic University

Dear Mr. Suits,

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 memorandum of October 6, 2010, whether as a Palm Beach County employee, you were able to serve as an adjunct professor at Florida Atlantic University (FAU). Attached to your request were a number of e-mails and documents reflecting contracts and interlocal agreements maintained between FAU and Palm Beach County.

IN SUM, FAU is included in the State University System and established by state statute as a part of the executive branch of state government. The code of ethics prohibits contracts between county employees or their outside business or employer and Palm Beach County. Specifically, sec. 2-442 exempts other governmental entities from the definition of outside employer or business. Therefore, there is no prohibition under sec. 2-443(c) of your employment by FAU. Notwithstanding, you cannot use your official position as a county employee to obtain a financial benefit for yourself, a relative, household member or non-profit organization of which you are an officer or director as that would violate sec. 2-443(a) *misuse of public office or employment*.

THE FACTS you submitted are as follows:

You are the administrative assistant to County Commissioner Jess Santamaria. For the past 10 years you have been employed as an adjunct professor at FAU teaching two courses; Mass Media Law & Regulation, and Public Relations and Community Relations. In 2009 you were hired in your current position within the Palm Beach County Government. You have arranged your teaching schedule so as not to conflict with your working hours for the county.

According to the information you have submitted, in the previous eight years Palm Beach County has maintained a number of contractual relationships with FAU which are currently expired. There is one ongoing interlocal agreement between the FAU Campus Police Department and the County Facilities Development & Operations Department relating to radio system access.

THE LEGAL BASIS for this opinion relies on the statutory designation of FAU as a governmental entity as well as the code of ethics definition of "outside employer or business" as contained in s. 2-442, which specifically excludes "...the county, the state, or any other regional, local or municipal government entity."



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s. 1001.705, Florida Statutes, states as follows:

Responsibility for the State University System under s. 7, Art. IX of the State Constitution

(1) DEFINITIONS. – For purposes of this act, the term:

(d) "State University" or "State Universities" as used in the State Constitution and the Florida Statutes are agencies of the state which belong to and are part of the executive branch of state government..."

The State University System of Florida, Board of Governors official website lists FAU as a state university.

The Palm Beach County code of ethics sec. 2-442 states as follows:

Outside employer or business includes:

(1) Any entity, *other than the county, the state, or any other regional, local, or municipal government entity*, of which the official or employee is a member, official, director, or employee, and from which he or she receives compensation..." (emphasis add)

Section 2-443(c) prohibits officials and employees from entering into "any contract or other transaction for goods or services with the county" through the official or employee's outside employer or business. There are enumerated waivers and exceptions to sec. 2-443(c), however, in this case you are not subject to the prohibition as your outside employer is a state governmental entity.

The code of ethics also prohibits you from using your official position with the county to benefit yourself, a relative, household member or civic or religious organization if you are an officer or director. Sec. 2-443(a) essentially prohibits you or the above persons or entities from benefiting financially, in a manner not shared with similarly situated members of the general public. You have an ongoing responsibility not to use your official position or office with the county to gain such a financial benefit.

IN SUMMARY, you are not prohibited from maintaining part-time employment with another governmental entity under sec. 2-443(c).

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 if I can be of any further assistance in this matter.

Sincerely

Alan S. Johnson
Executive Director

ASJ/gal