



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

November 8, 2010

Rachael Ondrus, Executive Director
Palm Beach County Legislative Delegation
301 North Olive Avenue, Suite 1101.11
West Palm Beach, FL 33401

Re: RQO 10-030
Gift Valuation

Dear Ms. Ondrus,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on November 4, 2010.

YOU ASKED in your email of October 15, 2010, whether as a county employee you were permitted to rent a condominium unit, while looking to purchase a home in Palm Beach County, from a person whose spouse is a Lobbyist. Additional information was provided in emails of October 18 and 25, 2010 as well as by a telephone conversation of October 28, 2010. In a subsequent email, you indicated that you are no longer looking to rent the subject property. Pursuant to the Commission on Ethics Rules and Procedures, Section B 2.4(f), once submitted, an advisory opinion request may not be withdrawn by the submitting party.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, as a Palm Beach County Employee, you are prohibited from accepting a gift greater than \$100 from a lobbyist, principal or employer of a lobbyist. To the extent that the fair market value of the rental exceeds the actual rental you would pay, that excess amount would be considered a gift and subject to the gift law prohibitions and requirements of the Palm Beach County Code of Ethics. The Code of Ethics does not limit the application of this prohibition to lobbyists who lobby your specific governmental entity. The plain language of the code extends these gift prohibitions to all lobbyists and all county employees.

THE FACTS as we understand them are as follows:

While looking into relocating to West Palm Beach, friends of yours have offered to rent you a *condominium unit on a month-to-month basis while you look to purchase a home*. The owner of the condominium unit is the wife of a lobbyist. The condominium is a two bedroom, one bathroom with 995 sq. ft. of living area.

According to your research, the proposed month-to-month rental price of \$1,100.00 plus utilities constitute fair market value as compared to similar rentals in the area. First, you found an apartment in the same building and similarly situated, which was being rented for \$1,100.00 and which offered



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greater square footage and an extra bathroom. In addition, you obtained information from www.rentometer.com, a website that purports to calculate fair market value for rental properties by location, square footage and amenities. According to this website, the proposed apartment rental was slightly below the median price for similarly situated condominium/apartments.

According to additional information provided, the lobbyist is married to the owner of the condominium. The lobbyist is registered with the State of Florida. He does not lobby any department, board or commission of the Palm Beach County government, which is your employer.

THE LEGAL BASIS for this opinion relies on the following sections of the Palm Beach County Code of Ethics.

Sec. 2-442. Definitions.

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal or most significant responsibilities to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

Sec. 2-444. Gift Law.

- (a) No county commissioner or employee, or any other person or business entity 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 person or business entity that the recipient knows is a lobbyist or any principal or employer of a lobbyist.

- (e) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, *without adequate and lawful consideration*. (Emphasis added)

This commission has previously opined that, since the Palm Beach County Code of Ethics is silent as to the matter of valuing and reporting gifts other than to refer to s.112.3148, Florida Statutes, the State valuation statute would be consulted in these matters.¹

Using this matrix, the fair market value of the rental would be offset by timely payment of rent. Any excess value over rent would be considered a gift. The burden is upon the public employee to show with clear and convincing evidence the fair market value of the rental in determining the amount, if any, that remains as a gift.

¹ RQO 10-005 – According to s.112.3148(7)(b), "compensation provided by the donee to the donor, if provided within 90 days of receipt of the gift, shall be deducted from the value of the gift in determining the value of the gift".



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The facts you have given indicate that although the property is owned by the spouse of the lobbyist, both benefit equally in any proceeds or enjoyment of the condominium unit. Therefore, any benefit that you receive from the transaction is attributable to both the lobbyist and spouse.


IN SUMMARY, any excess benefit to you that results from a rental price below fair market value must be considered a gift and subject to the prohibitions and requirements of section 2-444. Had you gone forward with this rental arrangement, you would have had the burden of demonstrating that fair market value and rental payments do not result in a prohibited gift in excess of \$100.

Based on the facts and circumstances you have submitted, you have sufficiently demonstrated that the difference between cost and fair market value would not have resulted in an excess benefit to you at this time. You have decided not to enter into this rental agreement. Had you done so, you would have had an ongoing responsibility to maintain a rental payment commensurate with the fair market value of that rental.

This opinion construes the Palm Beach County Code of Ethics Ordinance and State Statutes by reference; however, 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