



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

January 10, 2011

Connie Roy-Fisher
Studio Sprout Inc.
P.O. Box 420
Jupiter, FL 33468

RE: RQO 10-039
Prohibited contracts

Dear Ms. Roy-Fisher,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on January 6, 2011.

YOU ASKED in your emails dated November 22, 2010, and November 24, 2010, whether it is permissible for you, as a member of the Friends of the Mounts Botanical Gardens (Friends), a volunteer advisory board that advises and assists this county run facility, to submit a bid for contracted improvements to this facility. You provided additional information in telephone conversations to staff members of the Commission on Ethics.

IN SUM, based on the facts you have submitted, and those gleaned from staff conversations with Allen Sistrunk, Director of Mounts Botanical Gardens (Mounts), Friends is an advisory board composed of volunteers who are appointed by the Friends board itself through an internal selection committee. No member of Friends is appointed by the Board of County Commissioners (BCC) and Friends serves an advisory and support role with Mounts. As such, members of Friends are not county officials or employees as defined by Section 2-444 of the code of ethics. Therefore, you are not prohibited under the code from entering into a contractual relationship with the county to provide goods or services to the county.

THE FACTS as we understand them are as follows:

You are a member of an advisory board known as Friends of the Mounts Botanical Gardens (Friends). Members of this board provide support and advice to the county run facility know as Mounts Botanical Gardens (Mounts). Members are selected by the Friends board itself through an internal selection committee. None of the board members are appointed by the Palm Beach County Board of County Commissioners.

Mounts has issued a proposal to make improvements to its property, known as the "Shade and Color Island-Bridge and Overlook Improvements," through the county's Art in Public Places program. The budget for these improvements is \$137,000. Applications to be considered for this contracted work have been accepted from various "landscape artists," including you in your capacity as a private landscape artist. The determination of who is awarded this contract will not be based on a sealed bid, but will be chosen by a "selection committee" based on factors related to specific artistic proposals for the project. As a private landscape artist, you have submitted an application to be awarded this project in conjunction with another local artist.

2633 Vista Parkway, West Palm Beach, FL 33411 561.233.0724 FAX: 561.233.0735

Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com

Website: palmbeachcountyethics.com



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

The Chair of the Friends board is on the selection committee for this project. You will not be on the selection committee. The Chair has advised you that the Friends board sees no conflict with your submission.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

The Palm Beach County Code of Ethics Section 2-442, *Definitions*, states in relevant part:

Official or employee means any official or employee of the county, whether paid or unpaid...and *members appointed by the board of county commissioners to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.* (Emphasis added)

Based on the fact that you were not appointed to Friends by the Board of County Commissioners, you are not a county official and do not fall under the jurisdiction of the code of ethics.

IN SUMMARY, based on the information you have provided, it is not a violation of the code of ethics for you, as a member of Friends of the Mounts Botanical Gardens, to contract to supply goods or services to the county.

Although not prohibited from participating under the Code of Ethics, the Commission on Ethics recommends that, in order to avoid the appearance of impropriety, neither the chair nor any other member of Friends participate in the selection process on bids or proposals in which a member of Friends is a bidder or proposer.

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/meb/gal