



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

Eric Lee Johnson, AICP
Development Department, Planning and Zoning Division
100 East Boynton Beach Boulevard
Boynton Beach, FL 33435

Re: RQO 10-041

Dear Mr. Johnson,

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 a series of questions in your e-mails of December 21 & 22, 2010, involving your acceptance of a volunteer position to serve on the Board of Directors of a church in Delray Beach while being employed by the City of Boynton Beach. Specifically, you inquired as to whether: a gift or donation to the church is considered a personal gift to a board member; reimbursement of expenses by the church or a third party for travel on official church business is considered a reportable gift; your involvement in the purchase of property within Boynton Beach by the church is permissible.

IN SUM, as an employee of the City of Boynton Beach you are required to declare anything of value received in excess of \$100.00 if not specifically excluded from the definition of gift. A gift is anything of value. Reimbursement for church travel is not excluded as a reportable gift. You may not solicit on behalf of the Church, or accept a gift with a value in excess of \$100.00 from a lobbyist, principal or employer of a lobbyist. If any of the reimbursements or donations comes from a person or entity that lobbies or employs lobbyists in Boynton Beach, the \$100.00 limit applies.

For gift reporting purposes, the solicitation of a gift on behalf of a religious organization, while it may not be reportable under the requirements of sec. 2-444(d) as it pertains to you as an individual officer or director, may be prohibited under sec. 2-444(a) if the donor that you solicit is a lobbyist, principal or employer of a lobbyist.

Lastly, you may not use your official position in Boynton Beach to financially benefit the church if you are a director or officer of the church. Therefore, while you may participate in the purchase of the property, you cannot assist the church or use your influence in any way in your official position as Planning and Zoning Department Planner.

THE FACTS as we understand them are as follows:

You are an employee of the City of Boynton Beach, Development Department, Planning and Zoning Division (P & Z). The functions of your position include review of P & Z land development applications which include site plan, variance, rezoning and future land use map amendments within Boynton Beach. In your job, you typically review the work of private sector developers, contractors, architects, landscape architects, engineers and surveyors.

In your personal time, you are an active member of The Avenue Church (the Church), a church in Delray Beach. The Church has asked you to serve on their Board of Directors, effective January 1, 2011. The position would give

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you authority to write checks on their behalf and conduct other official church business. The Church is considering the purchase of property within the City of Boynton Beach and you may be called upon to participate in that purchase. At this time the Church conducts no business with the City of Boynton Beach.

In addition to other functions, you will be travelling on mission trips and conferences on behalf of the Church. Travel expenses for these church related trips may be reimbursed by money donated by individuals and businesses, either directly or indirectly through the Church. It is your belief that the individuals or businesses donating to the Church are "probably not vendors, but they may include bidders, proposers and service providers" in Boynton Beach. While you are not aware that any of the donations will come from lobbyists, principals or employers of lobbyists in Boynton Beach, you have not reviewed any lists of lobbyists, principals or employers of lobbyists maintained by the City. The Church itself does not employ a lobbyist or lobby within Boynton Beach.

THE LEGAL BASIS for this opinion relies on a number of sections within the code of ethics.

Sec. 2-443. Prohibited conduct.

- (a) Misuse of public office or employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
 - (7) A non-governmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

First and foremost, you may not use your position in Boynton Beach to financially benefit a religious organization of which you or your spouse or domestic partner are an officer or director. For example, if the Church were to purchase property within Boynton Beach, any use of your official position or office, any action that you may take, or influence you may exert on others that would financially benefit the Church in a manner "not shared with similarly situated members of the general public" would violate the misuse of office section of the code.

Sec. 2-443(e) of the code of ethics prohibits reimbursement for travel expenses, directly or indirectly, from any Boynton Beach vendor, contractor, service provider, bidder or proposer. A prohibited reimbursement may not be indirectly paid through the Church. There are exceptions where the travel is reimbursed by a governmental entity or by organizations which Boynton Beach is a member if the travel is related to that membership. Church related business is not exempted. A majority of the city commission may waive this prohibition. You have an obligation to check with the City of Boynton Beach to ensure that any reimbursement paid to you directly or through the Church, is not from a person doing business with the City of Boynton Beach.

The following code sections apply to gifts:

Sec. 2-444(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."



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Sec. 2-444(a) No...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."

Sec. 2-444(d)(2) All...officials or employees who receive any gift in excess of one hundred dollars (\$100.00) shall complete and submit an annual gift report..."

Sec. 2-444(c) No person or entity shall offer, give or agree to give an official or employee a gift and no official or employee shall accept or agree to accept a gift from a person or entity because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

You must take great care in scrutinizing any person or entity who wishes to reimburse your church related travel expenses. These reimbursements are considered gifts and are prohibited if solicited or accepted from Boynton Beach contractors, vendors, service providers, bidders or proposers unless waived by the city commission. Your scrutiny is also necessary in any general solicitation for donations in excess of one hundred dollars (\$100.00), direct or indirect, made by you, or on your behalf by the Church and involving any lobbyist, principal or employer of a lobbyist. Such a gift from a lobbyist, principal or employer of a lobbyist is prohibited and may not be waived.

The issue of reimbursement/gift reporting requirements and prohibitions has been previously addressed by the Commission on Ethics. It is the responsibility of the official or employee to know, prior to accepting a reimbursement/gift in excess of \$100.00, whether a contractor, bidder, proposer or service provider offering the reimbursement for travel expenses lobbies county government.¹

It should be noted that gifts donated to a religious organization, not for the benefit of any individual, are not reportable as gifts by the individual officers or directors of that organization under sec. 2-444(d), however, the prohibition of acceptance or solicitation of gifts from lobbyists under sec. 2-444(a) apply to "any gift" solicited or accepted in excess of \$100.00 from those persons or entities. Therefore, your acceptance or solicitation of any such gift on behalf of the organization would be prohibited.²

IN SUMMARY, based on the facts and circumstances you have submitted, the Palm Beach County Code of Ethics does not prohibit you from volunteering to serve on the Board of Directors of The Avenue Church. Insofar as church related travel is concerned, you may not be reimbursed by persons and entities that are engaged in business with the City of Boynton Beach, such as vendors, contractors, service providers, bidders or proposers, unless you receive a waiver from the city commission. You may not, under any circumstances, accept any donations in excess of one hundred dollars (\$100.00), directly or indirectly, from a lobbyist, principal or employer of a lobbyist who lobbies Boynton Beach. You may not accept any gift/donation in return for an official act or the performance of a legal duty as an employee of the city. Any reimbursement to you is a gift and if not prohibited must be reported on an annual gift reporting form if in excess of one hundred dollars (\$100.00)

¹ RQO 10-032

² RQO 10-004



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The purchase of land within Boynton Beach by the Church will certainly have the potential to create a conflict should issues emerge involving the Planning and Zoning Department. In that regard, you must not take any official action or influence others to take any official action that might benefit the Church.

Your duty to not use your official position to financially benefit a religious organization where you are an officer or director is ongoing.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law or City of Boynton Beach rules and regulations. 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 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/gal