



# 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

February 23, 2011

Walt Smyser  
Lake Worth Utilities Water System  
1900 2<sup>nd</sup> Avenue North  
Lake Worth, Florida 33461

Re: RQO 11-004-OE

Dear Mr. Smyser,

Your request for an 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 email of February 9, 2011, whether you, as an employee of the City of Lake Worth, could continue to serve as webmaster for the Florida Water and Pollution Control Operators Association (FWPCOA). You advised that FWPCOA has not entered into any contract or other transaction for goods or services with the City of Lake Worth and that you have obtained merit rule approval from your supervisor.

IN SUM, based on the facts you submitted, you are not prohibited from serving as webmaster to the FWPCOA. Nevertheless, you may not use your official position as a city employee to obtain a financial benefit for FWPCOA.

THE FACTS you submitted are as follows:

You are the water/sewer engineer for the City of Lake Worth. As one of five organizations approved by the Florida Department of Environmental Protection to provide training in water treatment and distribution for water and sewer operators, the FWPCOA offers continuing education units to City of Lake Worth utilities employees. Employees, rather than the city, pay course fees personally. Lake Worth does not contract with FWPCOA for these trainings, but may reimburse employees taking part in these sessions. The FWPCOA pays you fifteen dollars per hour (\$15.00) for your services as webmaster and you have obtained merit rule approval from your supervisor to continue this outside employment.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics, which was voluntarily adopted by the City of Lake Worth in 2011.



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Palm Beach County Code of Ethics Section 2-443 states:

Outside employer or business is defined as:

- (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 added)

FWPCOA is an outside employer; it is not a state, local or municipal government entity and you receive an hourly stipend of fifteen dollars (\$15.00).

Section 2-443 (a) reads:

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, to 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:
  - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;

Section 2-443(a) prohibits you for using your official position to obtain a financial benefit for yourself, FWPCOA, or anyone who works for FWPCOA. You have an ongoing responsibility not to use your official position or office with the city to gain such a financial benefit.

Finally, Section 2-443(c) states in part:

- (c) *Prohibited contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with the [City of Lake Worth]. This prohibition extends to all contracts or transactions between the county or any person or agency acting for the [City of Lake Worth], and the official or employee, directly or indirectly, or the official or employee's outside employer or business.

Section 2-443 (c) prohibits officials and employees from entering into any contract with the city through the official or employee's outside employer or business. There are enumerated waivers and exceptions to 2-443(c), however in this case you advised that FWPCOA has no such contracts or transactions for goods or services with the city. At this time, this section does not apply to you.



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IN SUMMARY, based on the information you provided, you are not prohibited from acting as webmaster for the FWPCOA. However, you may not use your official position to financially benefit yourself, FWPCOA or any employee of FWPCOA.

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

AJS/meb/gal