



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 22, 2011

Commissioner Karen Marcus
Palm Beach County Board of County Commissioners
310 N. Olive Avenue, 6th Floor
West Palm Beach, FL 33401

RE: RQO 11-005
Gift law

Dear Commissioner Marcus,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows.

YOU ASKED in an email dated February 15, 2011, and a follow-up e-mail on February 17, whether a two hour airboat tour of the Arthur R. Marshall Loxahatchee National Wildlife Refuge given to Palm Beach County Commissioners by the U.S. Fish and Wildlife Service, but arranged for by a lobbyist for a non-profit environmental group who also provided a box lunch, is considered a gift subject to the restrictions and requirements of the Palm Beach County Code of Ethics.

IN SUM, based on the information you have submitted, the airboat ride and guided tour provided by the U.S. Fish and Wildlife Service for the purpose of educating commissioners about water quality issues, the effects of too many nutrients in the water, and the programs in place for Everglades restoration, is not considered a gift under Section 2-444, *Gift law*, of the Palm Beach County Code of Ethics. However, the box lunch provided by 1000 Friends of Florida, a non-profit agency and employer of a lobbyist, is considered a gift. Since the lunch was not valued at more than one hundred dollars (\$100.00), it is not a prohibited gift under the code.

THE FACTS as we understand them are as follows:

Palm Beach County Commissioners, including Commissioner Karen Marcus, Shelley Vana, Paulette Burdick and Priscilla Taylor, have been given a two-hour long tour of the Arthur R. Marshall Loxahatchee Wildlife Refuge, located in unincorporated Boynton Beach. According to the U.S. Fish and Wildlife Service (FSW) the purpose of this tour is educational, aimed at showing the commissioners, as a local governing body, some of the issues faced by FSW in maintaining water quality within the Everglades and the wildlife sanctuary. All Palm Beach County Commissioners have been invited to take the tour, given by FSW. FSW does not provide tours for the general public. The tour includes biologists and/or other FSW employees, serving as guides. All expenses for the tour itself are paid for by FSW, using an airboat owned by FSW. The tour was arranged by a lobbyist for a non-profit environmental group called 1000 Friends of Florida, who provided box lunches to each participant, at a cost of less than ten dollars



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(\$10.00) each. Several other lobbyists from non-profit environmental groups have also been allowed to attend.

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

The Palm Beach County Code of Ethics Section 2-444, *Gift law*, states in relevant part:

- (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*. (Emphasis added)
- (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, promise, or in any other form, *without adequate and lawful consideration*. (Emphasis added)

However, Section 2-444(e)(1)(f), states as follows in relevant part:

- (1) Exceptions. The provisions of subsection (e) *shall not apply* to:
 - (f) Gifts solicited by county commissioners *on behalf of the county in performance of their official duties for use solely by the county in conducting official business*. (Emphasis added)

IN SUMMARY, based on the information provided, the cost of the actual airboat tour of the wildlife refuge is paid for by the U.S. Fish and Wildlife Service, a department of the federal government. The federal government is not a lobbyist, or the employer of or principal of a lobbyist, within the meaning of the code of ethics.¹ Therefore, even if the value of the airboat tour is in excess of the one-hundred dollar threshold, it would not be a prohibited gift.

Further, since the tour itself is for educational purposes for members of the county commission to better understand how their actions as a governing body may affect water quality within this natural resource, the airboat tour falls under §2-444(e)(1)(f) of the code of ethics as being "*...on behalf of the county in performance of their official duties for use solely by the county in conducting official business.*"

¹ Art. XIII, sec. 2-442. "...Lobbyist shall not include any employee... of a governmental agency lobbying on behalf of that agency..."



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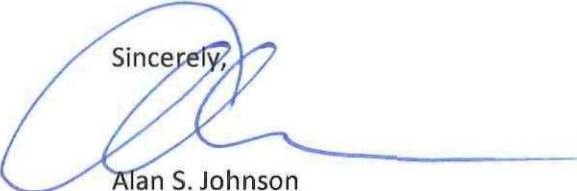
The Florida Administrative Code likewise excludes the use of a public facility, made available by a governmental entity for a public purpose, from the definition of a gift.²

The box lunch provided by 1000 Friends of Florida is a gift from a lobbyist, or employer or principle of a lobbyist. However, since the value of this gift is not in excess of one hundred dollars (\$100.00), it is not a prohibited or reportable gift under the code.

This opinion construes the Palm Beach County Code of Ethics ordinance, but is not applicable to any conflict under state law. Inquires 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

² Florida Administrative Code § 34-13.214 Specific Examples of What Does Not Constitute a Gift. (6) The use of a public facility or public property, made available by a governmental entity, for a public purpose.