



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

Commissioner Paulette Burdick
Palm Beach County Board of County Commissioners
310 N. Olive Ave.
West Palm Beach, FL 33401

RE: RQO 11-006
Gift law/Prohibited Conduct

Dear Commissioner Burdick,

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 18, 2011, whether allowing your nieces, who are high school and college students, to accompany you on a boat tour of the Lake Worth Lagoon given by the county's Environmental Resources Management Department (ERM), to provide an overview of the environmental restoration of the estuarine waters of the Lagoon, is a violation of the Code of Ethics. The public purpose of this tour is in support of your role as Chair of the Artificial Reef and Estuarine Enhancement Committee. You advised in follow-up emails that ERM does not offer such tours for members of the general public or students, and that an equivalent tour of the Lagoon on a commercial vessel would cost between five dollars (\$5.00) and twenty-five dollars (\$25.00) per person, depending on age and Florida residency.

IN SUM, based on the information you have submitted, the Lagoon tour is in performance of your public duties, and is therefore not a gift. However, because you may not use your official position to financially benefit your nieces, allowing them to accompany you could violate this provision. Notwithstanding, if reimbursement for the value of a financial benefit can be established, a payment of that amount may, depending upon the circumstances, eliminate the financial benefit. In this scenario, paying the equivalent amount to cover the commercial cost of your nieces' trip, by reimbursing ERM directly or indirectly through the general county fund, would eliminate the financial benefit and no violation of the code would occur.

THE FACTS as we understand them are as follows:

As a Palm Beach County Commissioner, you have been invited by the Palm Beach County Environmental Resources Management Department (ERM) to tour the Lake Worth Lagoon by boat to provide an overview of the environmental restoration of the estuarine waters of the Lagoon. You are Chair of the Artificial Reef and Estuarine Enhancement Committee. You would like two of your nieces to accompany you on this tour, feeling that it would be educational for them to attend. Your nieces are students, one in high school the other in college. ERM generally does not offer such tours to the public or to students. In researching the value of the tour in relation to your nieces, you have discovered that a similar tour on a commercial vessel costs between five dollars (\$5.00) and twenty-five dollars (\$25.00) per person, depending on the riders' age and whether or not they are a Florida resident.

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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 2-443, *Prohibited Conduct*, states in relevant part:

- (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: (Emphasis added)
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, *niece* or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people; (Emphasis added)

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 Lagoon tour will be given by ERM, which is a department of Palm Beach County. Palm Beach County is not a lobbyist, or the employer of or principal of a



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lobbyist, within the meaning of the code of ethics.¹ Therefore, even if the value of the tour was in excess of the one-hundred dollar threshold, it would not be a prohibited gift under the code of ethics, either to you or indirectly to your nieces.


Further, since the tour itself is to provide an overview of the environmental restoration of the estuarine waters of the Lagoon and you are the Chair of the Artificial Reef and Estuarine Enhancement Committee, the 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." 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 Therefore, your attendance is not considered a gift.

The economic value of the tour for your nieces, however, may be considered as an indirect gift to you. If the value exceeded one hundred (\$100.00) dollars, you would need to report it on your state quarterly gift report. However, since this tour is only offered because of your position as a PBC Commissioner, it is more accurately viewed as a potential violation of §2-443(a)(3), *Misuse of Office*. Because your nieces would receive a financial benefit, not shared by similarly situated members of the general public, their attendance may constitute a violation. Nonetheless, since an equivalent commercial value for this tour can be established, payment of this amount to ERM or to the Palm Beach County general revenue fund would eliminate the "financial benefit," and assure that no violation of the code of ethics occurs in this matter. Based on the facts you have submitted, if fully reimbursed, the tour would not be an indirect gift or a misuse of office.

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/gal

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

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.