



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
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Ronald E. Harbison
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Executive Director

Alan S. Johnson

June 3, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-007
Gift Law

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 2, 2011.

YOU ASKED in your original letter dated February 10, 2011, whether off-duty attendance by town public safety employees and certain town officials at an annual event hosted by the Palm Beach Country Club (PBCC), where they receive lunch and complimentary use of golf and tennis facilities as an expression of appreciation for their work in protecting the residents of Palm Beach, violates the Palm Beach County Code of Ethics. You furnished additional information at a meeting with COE staff on May 18, 2011.

IN SUM, based on your representation that PBCC is not a vendor, lobbyist or principal or employer of lobbyists of the Town of Palm Beach, and that there is no "quid pro quo" or special treatment or privileges given to PBCC in exchange for hosting this event by any public employee or official of the Town of Palm Beach, the Code of Ethics does not prohibit employees or officials from attending. However, while not considered a prohibited gift, attendance at this event may constitute a reportable gift under the code, if the value of such attendance for an employee or official is greater than one hundred dollars (\$100). As such, it must be disclosed in an annual gift report to be filed with Palm Beach County Commission on Ethics (PBCCOE), or in the case of state reporting individuals, a quarterly gift report filed with the State of Florida and copied to the PBCCOE, under Section 2-444(f) (1) or (2) of the ethics code and applicable state law.

THE FACTS as we understand them are as follows:

You are the Town Manager of the Town of Palm Beach. Each year, the Palm Beach Country Club hosts an event where they invite town police officers, firefighters, and selected management staff and town officials to attend. The attendees receive a lunch and

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complimentary access to golf and tennis facilities. The purpose of this event is to show appreciation for the work of public safety employees throughout the year.

The Palm Beach County Club (PBCC) is a privately held Florida non-profit corporation. You advised that PBCC does not have contracts for goods or services with the Town of Palm Beach, nor do they have any pending bid proposals or offers to sell goods or services to the town. Additionally, they do not sell or lease real or personal property to or from the town. Therefore, PBCC is not a "vendor" of the Town of Palm Beach as defined in Section 2-442 (Definitions) of the code. Further, you advise that PBCC is not a principal or employer of lobbyists, as defined in Section 2-442.

Finally, you state that there is no "quid pro quo" given to PBCC or its owners or employees and the club receives no special privileges or treatment by employees or officials of the Town of Palm Beach for hosting this event.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics, which took effect on June 1, 2011:

Sec. 2-444. Gift Law.

- (a)(1) No county commissioner, *member of a local governing body, mayor or chief executive when not a member of the local governing body, 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) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.* (Emphasis added)
- (f) Gift Reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (f)(1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. *A copy of each report shall be filed with the county commission on ethics.* (Emphasis added)



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(f)(2) *All other officials and employees who are not reporting individuals under state law.*

(f)(2)(b) *All other gifts. All officials and employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. (Emphasis added)*

(g) 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...*In determining the value of the gift, the recipient of the gift may consult, among other sources, §112.3148, Florida Statutes and the Florida Administrative Code as may be amended. (Emphasis added)

Florida law provides that "the value of a gift provided to several individuals may be attributed on a pro-rata basis among all of the individuals. If the gift is food, beverage, entertainment, or similar items, provided at a function for more than 10 people, the value of the gift to each individual shall be the total value of the items provided divided by the number of persons invited to the function."¹

In addition, with respect to the use of the PBCC facilities, valuation would be "the reasonable and customary charge regularly charged for such service in the community in which the service is provided..."² Therefore, the actual cost of the use of the facilities to either a member, guest or the public, whichever is applicable, would constitute the value of that portion of the gift.

IN SUMMARY, based upon the facts submitted, even assuming the value of the individual gift is in excess of \$100, there is no prohibition within the Code of Ethics that prevents invited employees and officials of the Town of Palm Beach from attending the annual public safety appreciation event hosted by the Palm Beach Country Club (PBCC), so long as PBCC is not a

¹ §112.3148(7)(j)

² § 112.3148(7)(a)



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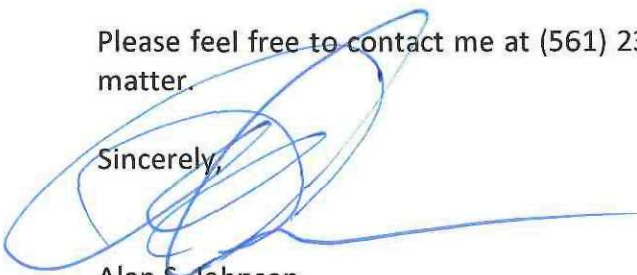
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vendor for the town, is not a lobbyist or principal or employer of a lobbyist that lobbies the town, and so long as there is no "quid pro quo" or special privilege or treatment given to PBCC by employees, officials or the town based on the hosting of this event. While not a prohibited gift under the code, if the value of the attendance is greater than \$100, attendance at this event is a reportable gift under Section 2-444(f) (1) or (2) of the code or state law, as applicable.

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 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson
Executive Director
Commission on Ethics

ASJ/meb/gal