



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

April 8, 2011

Phil Donovan, Water Plant Operator
City of Lake Worth Utilities Department
Municipal Services Building
1900 2nd Avenue North
Lake Worth, FL 33461

Re: RQO 11-012
Prohibited contracts

Dear Mr. Donovan,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on April 7, 2011.

YOU ASKED in your letter dated March 18 2011, whether, as an employee of the City of Lake Worth Utilities Department (LWUD), you are prohibited by the Palm Beach County Code of Ethics from operating your outside business, collecting drinking water for testing for two "consecutive" water utility systems that purchase water from Lake Worth Utilities for resale to homeowners. In follow-up emails on March 22nd and March 23rd, you further indicated that part of your duties for your city employment involves responsibility for water quality.

IN SUM, under the facts you have provided, you are prohibited from operating an outside business under which you obtain samples of drinking water for testing from a "consecutive" water utility system, when that secondary water utility buys this water directly from your government employer, the City of Lake Worth Utility Department, and part of your city employment responsibilities includes maintaining water quality.

THE FACTS as we understand them are as follows:

You are a Water Plant Operator employed by the City of Lake Worth Utilities Department (LWUD). In your employment with LWUD, one of your responsibilities is ensuring proper water quality for drinking water that LWUD distributes to its customers. You have a Florida Drinking Water License, which is required under Florida law for both your city employment, and to conduct your outside business. Your outside business involves obtaining drinking water samples from two consecutive water systems, and transporting those samples to public and private laboratories for water quality testing.

This outside business began about 20 years ago when your name was among those submitted to the Palm Beach County Health Department, to establish a list of qualified individuals to assist small utilities



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with mandated drinking water testing. A “qualified individual” for this purpose, refers to someone with a valid Florida Drinking Water License. Regulations require a “consecutive water utility” (a secondary utility that purchases drinking water from a primary utility, and re-sells the water to its customers), to test all water distributed in such a manner, even if it was tested previously by the primary provider.

Sometime after submitting your name to the Health Department, you were contacted by both Lake Osborne Estates and WP Utilities (AKA Palm Breezes Club). You entered into an agreement with both entities to take drinking water samples from their system, and transport them to laboratories for testing on a monthly basis. You do not conduct the tests yourself, but are responsible for both obtaining the water samples, and transporting them to the laboratories. You advised that while both your city employment and your outside business require you to maintain a valid Florida Drinking Water License, the maintaining of your outside business is not dependent on your continued employment with the City of Lake Worth. Because this drinking water is delivered by an underground pipeline connected directly to the LWUD water pipelines, LWUD is the sole source water available to these two secondary providers.

THE LEGAL BASIS for this opinion relies on the following relevant sections of the Code of Ethics.

Section 2-443(c) prohibits officials and employees from entering into “any contract or other transaction for goods or services with the [City]” *either directly or indirectly*, through the official or employee’s outside employer or business. An outside business is defined in section 2-442(2) as “Any entity located in the [City] or which does business with or is regulated by the [City], in which the official or employee has an ownership interest...”

Under the facts you have provided, you have an outside business and have entered into an agreement with “consecutive water utilities” that purchase their water from your government employer. Your agreement involves aspects of water quality assurance. Because one of your responsibilities in your city employment is maintaining the drinking water quality LWUD provides to customers, including these consecutive water utilities, you have a potential conflict of interest in the water quality of the consecutive water systems. The indirect contractual relationship through these “consecutive water utilities” with LWUD is prohibited under the Code of Ethics.

IN SUMMARY, as an employee of the City of Lake Worth, you fall under the jurisdiction of the Code of Ethics by agreement between the Commission on Ethics and the City of Lake Worth. Under the Code, you may not, *directly or indirectly*, enter into a contract for goods or services with your government employer. Under the facts you have presented, you have a potential conflict of interest in maintaining the water quality of both your public employer and outside customer, also a customer of your public employer. Therefore you are prohibited under the Code of Ethics from entering into an agreement with “consecutive water utilities” that obtain their water from LWUD.



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This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law or any ordinance enacted by the City of Lake Worth. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics. Inquiries regarding possible conflicts under any Lake Worth City Ordinance should be directed to the City Attorney.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/meb/gal