



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
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Bruce E. Reinhart

Executive Director

Alan S. Johnson

April 1, 2011

Robert Shorr, President
Accurate Balancing and Commissioning, Inc.
254 9th Street
West Palm Beach, FL 33401

Re: RQO 11-014
Prohibited Contracts

Dear Mr. Shorr,

Your request for 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 e-mail of March 23, 2011, whether your status as a former employee of Palm Beach County prohibits your privately owned business, Accurate Balancing and Commissioning, Inc., (ABC), from seeking to provide services to, or from entering into service contracts with, Palm Beach County.

IN SUM, there is no prohibition in the Code of Ethics that would prohibit you, as a former employee of Palm Beach County, from providing services to, or entering into service contracts with, Palm Beach County, beyond the restrictions enumerated within the Palm Beach County Post-Employment Ordinance. Since your employment with the county terminated in 2004, the prohibited time periods within the Post-Employment Ordinance have expired.

THE FACTS as we understand them are as follows:

You were an employee of Palm Beach County from 1989 through 2004 in the Solid Waste Authority, Water Utilities and Facilities Departments. You left county employment in 2004. After leaving employment with the county, you opened a private business, Accurate Balancing and Commissions, Inc., (ABC) in 2007. You are the sole owner of this small business. This business was certified by the Palm Beach County Office of Small Business Assistance (SBA) on August 10, 2010, as a Palm Beach County "vendor" for specific services offered by your company. This certification to be a county vendor is valid until August, 2013 according to documentation you submitted. You live with your girlfriend, Rebecca Carter, who is herself an employee of Palm Beach County. She is the Senior Secretary for the Facilities Management Division. She has no involvement with ABC, and is not an officer or shareholder in this company.

The reason for your request for this Advisory Opinion is that you have been told through a secondary source that as a former employee of Palm Beach County, who lives with a current employee, a conflict of interest is present whereby the county cannot employ your company to provide services.

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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:

Sec. 2-442. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Official or employee means any official or employee of the county, whether paid or unpaid, and includes all members of an office, board, body, advisory board, council, commission, agency, department, district, division, committee, or subcommittee of the county. (Emphasis added)

Sec. 2-443. Prohibited conduct.

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

Sec. 2-143. Prohibited conduct after termination of employment or office with the county, prohibits certain former high level employees from representing "anyone other than the county or another public entity in connection with any matter" for a period of up to two (2) years after leaving employment with the county. (Ord. No. 88-30)

Even if you held a high ranking position within county government, you have not been employed by the county for over six (6) years; therefore the prohibitions of this ordinance do not apply. Insofar as your live-in girlfriend is concerned, so long as she is not an officer, shareholder or otherwise employed by your solely owned company and refrains from using her position in any capacity to benefit herself, you or your outside business, there is no prohibition from ABC doing business with the county. Therefore, section 2-443(c) of the code would not apply to her, you or to ABC. The Palm Beach County Post-Employment Ordinance (Ord. No. 88-30) is also not applicable to you, since you left county employment more than two (2) years ago.

IN SUMMARY, based on the facts you have submitted, there is no prohibition within the Code of Ethics or Post-Employment Ordinance that prevents you from providing services for, or entering into a contract to provide services to Palm Beach County.

Notwithstanding this opinion, as a vendor please be aware that under Section 2-443(a) *Misuse of office or employment*, your girlfriend, as a member of your household, may not take, or fail to take, any action



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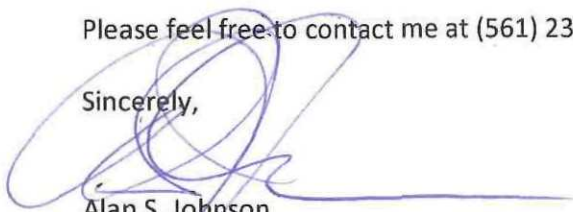
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in her position as an employee with the county, in a manner that she knows, or should know with the exercise of reasonable care, will result in any financial benefit to you or to her, not shared by similarly situated members of the general public. This would include any improper action or inaction involving the awarding of county business to your company.

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