



# 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

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April 25, 2011

Walt Smyser  
Lake Worth Utilities Water System  
1900 2<sup>nd</sup> Avenue North  
Lake Worth, Florida 33461

Re: RQO 11-019  
Gift Law

Dear Mr. Smyser,

Your request for an 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 email on April 15, whether you could attend a fish fry and pool party sponsored by a local engineering, planning and consulting firm. In a second email on April 15, 2011 you indicated that you would not be attending either of the events and thus would not require an advisory opinion. Pursuant to the Commission on Ethics Rules of Procedure, Section B 2.4(f), once submitted, an advisory opinion request may not be withdrawn by the submitting party. Therefore, please find the following response to your original request.

IN SUM, Section 2-444 does not prohibit City of Lake Worth employees from attending events where they pay an admission fee. Alternatively, if there is no admission fee and the sponsor of an event is not a lobbyist, principal or employer of a lobbyist, employees must report their attendance only if the per person cost of the event exceeds one hundred dollars.

THE FACTS as we understand them are as follows:

You are a water/sewer engineer for the City of Lake Worth. A local engineering, planning and consulting firm, Simmons and White invited you to attend its 12<sup>th</sup> Annual KDW Fishing Tournament and Fish Fry. According to the invitation, there is a \$150.00 entry fee per boat for the fishing tournament but there is no fee to attend the fish fry and pool party. Lake Worth employees were not offered free admission to the tournament portion of the event. Proceeds from the event benefit the Florida Engineering Society Scholarship Fund. In an email on April 15, commission staff requested that you determine whether Simmons and White lobbied the City of Lake Worth. You responded, "since I will not be attending this event I will not be in violation no matter what. I therefore do not need to contact the City Administration to determine if they have any contracts with the city. Thank you." As such, commission



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staff contacted Simmons and White, Inc. and spoke with one of the event organizers Sarah Abercrombie. Ms. Abercrombie indicated that Simmons and White does not employ lobbyists.

THE LEGAL BASIS for this opinion may be found in sec. 2-444 of the Palm Beach county Code of Ethics.

Article XIII, Section 2-444. Gift Law.

(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 or promise, or in any other form, without adequate and lawful consideration. Food and beverage consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

In this case, Lake Worth employees or officials may pay for and participate in the fishing tournament. When an employee or official purchases a ticket to an event or pays an entry fee as in this case, that payment is consideration for their attendance and is not a gift. However, attending the fish fry may be a reportable gift.

Section 2-444 (d) addresses the reporting requirements of the gift law.

Article XIII, Sec. 2-444. Gift Law.

(d) Gift Reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100.00) shall report that gift.

If the value of the fish fry is more than \$100.00 per person, it is a reportable gift. The ethics commission has previously addressed valuation issues and determined that for the purposes of valuation, s. 112.3148 is relevant.<sup>1</sup> Of significance here, subsection 7(j) provides the following:

(j) The value of a gift provided to several individuals may be attributed on a pro rata basis amount 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 person invited to the function, unless the items are purchased on a per person basis, in which case the value of the gift to each person is the per person cost.

After attending an event, such as the Simmons and White fish fry, an employee or official must contact their host to determine the overall cost of the event and then divide that cost based on the number of attendees according to the valuation portion of the state ethics code. If the amount exceeds \$100.00

<sup>1</sup> RQO 10-005



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you must report this as a gift on your annual gift reporting firm. If your spouse or other individual on your behalf attends with you, you must calculate the total cost of both you and your guests attendance.<sup>2</sup> Therefore, even if the cost per person is not in excess of \$100.00, it still may be a reportable gift.

IN SUMMARY, The Palm Beach County Code of Ethics does not prohibit Lake Worth employees from entering the Simmons and White fishing tournament. Employees who wish to attend the fish fry may attend the event but will need to determine if their attendance qualifies as a reportable gift.

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. Inquiries regarding possible conflict 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/mcr/gal

<sup>2</sup> RQ010-024