



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

May 6, 2011

Clark D. Bennett
Spectrum Municipal Services, Inc.
2501A Burns Road
Palm Beach Gardens, Florida 33410

Re: RQO 11-020
Conflict of Interest

Dear Mr. Bennett,

The Commission on Ethics considered your request and rendered its opinion at a public meeting held on May 5, 2011. The opinion rendered is as follows:

YOU ASKED in your email whether as a county vendor you could continue to serve on the board of a non-profit organization that receives funding from the county and is currently applying for additional grant monies or whether this relationship creates a conflict of interest in violation of the code of ethics.

IN SUM, while you are a vendor doing business with Palm Beach County, you are neither an employee nor an official as those terms are defined within the code. The code of ethics does not prohibit vendors from entering into multiple contracts or transactions with the county through more than one private entity, whether for profit or non-profit.

THE FACTS as we understand them are as follows:

You are the managing director of Spectrum Municipal Services, a municipal advisory firm that provides guidance to county decision-makers on public finance issues. You are also the Chairman of the Board of Alzheimer's Community Care, Inc. (ACC), an organization founded to provide specialized care to Alzheimer's disease and related disorder patients and caregivers. ACC has received funding from the county in the past and is currently applying for additional county funding.

THE LEGAL BASIS for this opinion may be found in Sec. 2-442 of the Palm Beach County Code of Ethics:

Official or employee means an 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.



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While the code definition is intentionally broad in nature, it is not intended to reach persons retained by the county on a contractual basis. Such persons are classified as independent contractors¹ and are not currently considered employees as defined by the code.² The two elements that distinguish an independent contractor from an employee are 1) the contractor has an independent business and 2) the employer does not control the manner in which the contractor performs their work. Here, you have an independent business and are free to sell your financial services to the county. As such, for the purpose of the Palm Beach County Code of Ethics you are an independent contractor, not an employee.

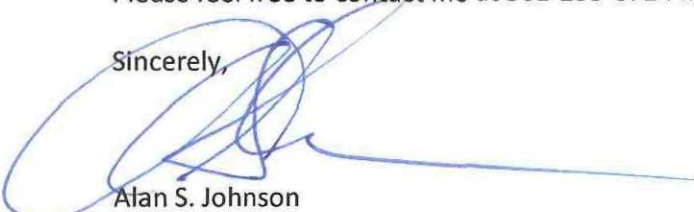
While you are not an employee or official, as a county vendor you do have standing to ask for an advisory opinion pursuant to the jurisdiction conveyed in sec. 2-448(a) of the code of ethics.

IN SUMMARY, based on the facts and circumstances submitted, you are a vendor transacting business with Palm Beach County to provide advice on public finance issues. You are not a county employee or official. Accordingly, the code of ethics does not prohibit you from transacting or contracting with the county in your capacity as a director of a charitable organization.

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 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/mcr/gal

¹ "One who, in exercising an independent employment, contracts to do certain work according to his own methods, without being subject to the control of his employer, except as to the product or result of his work." 41 Am Jur.2d Independent Contractors s.1, 1968.

² A revised code of ethics currently before the BCC expands the definition of employee to include "contract personnel and contract administrators performing a government function..." Once the new code of ethics is adopted your status under the code may change which in turn may affect the applicability of this opinion.