



# Palm Beach County Commission on Ethics

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June 3, 2011

Martha LaVerghetta, Assistant Airport Properties Manager  
Palm Beach County Department of Airports  
846 Palm Beach International Airport  
West Palm Beach, FL 33406

Re: RQO 11-022  
Gift Law

Dear Ms. LaVerghetta,

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

YOU ASKED in your letter dated May 17, 2011 whether your position as an Assistant Airport Properties Manager of the Palm Beach County Department of Airports created a conflict with certain benefits you may receive from your husband's employer. Your husband is a pilot for AirTran Airways, but due to the purchase of AirTran by Southwest Airlines, he will shortly be an employee of Southwest. Both Southwest and AirTran lease space from the Palm Beach County Department of Airports. Specifically, you inquired as to whether you could accept airfare, accommodations and meals at a conference for new employees and their families hosted by Southwest Airlines and, as an immediate family member of an airline employee, whether you could accept flight privileges to destinations served by Southwest and AirTran.

IN SUM, AirTran and Southwest Airlines (Southwest) are not vendors of Palm Beach County as defined by the Palm Beach County Code of Ethics. Therefore, you are not prohibited from accepting meals and accommodations provided by Southwest at the conference, however, as a county employee you must report any gift valued at over \$100. Family flight privileges are a negotiated benefit for your husband's employment and are not gifts. On the other hand, your accommodations and meals at a conference hosted by Southwest Airlines may be a reportable gift if the value exceeds one hundred dollars. Moreover, you may not accept anything of value because of an "official action taken" or "duty performed." Finally, you may not use your official position to financially benefit your husband's current employer, AirTran Airways, or his future employer, Southwest.

THE FACTS as we understand them are as follows:

You are currently employed as an Assistant Airport Properties Manager with the Palm Beach County Department of Airports. Your job entails assisting in the development, preparation and monitoring of contracts, leases, and permits at the county's four airports. Moreover, you serve as a point of contact for existing airport tenants and aid in preparing agreements, amendments and resolutions on behalf of the county. You indicated that while you have extensive contact with existing and potential tenants, you

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do not have any authority or delegated authority to sign agreements with these tenants on behalf of the county. Your husband is a pilot for AirTran Airways. AirTran was purchased by Southwest in May of 2011 and both AirTran and Southwest are tenants at the Palm Beach International Airport. As part of the merger between Southwest and AirTran, Southwest will be holding an indoctrination conference for all former AirTran employees and their families in Texas. At this time, you do not have any information on the dates or location of the conference. Southwest will provide flights, hotel accommodations, and meals to all new employees and their families.

In addition, as is standard across the industry, immediate family members of airline employees are entitled to fly free of charge to any destination serviced by the airline. In a follow up phone call on May 23, 2011, you informed commission staff that this benefit is part of employee compensation as negotiated by the collective bargaining association that represents your husband and his co-workers.

THE LEGAL BASIS for this opinion relies on the following sections of the Palm Beach County Code of Ethics.

#### **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 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 (\$100.00) 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.

This section of the gift law prohibits employees or officials from accepting a gift valued at more than \$100 from a county vendor, lobbyist or principal or employer of a lobbyist. The term vendor is defined as follows.

#### **Sec. 2-442. Definitions**

*Vendor* means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager, or employee.

While Southwest leases property *from* the county, it does not lease property *to* the county. Therefore, Southwest is not a county vendor and as such, §2-244(a)(1) does not apply to this situation. You are not prohibited from accepting a gift from Southwest in excess of \$100, so long as you report it on your annual gift disclosure form. Please keep in mind that, a county employee may not accept a gift of *any amount* for "an official action taken" or "duty performed."<sup>1</sup>

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<sup>1</sup> Section 2-444(e)

## Sec. 2-444. Gift law

### (f) Gift Reports.

- b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive a gift in excess of one hundred (\$100.00), 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.

The code defines "gift" in section 2-444(g)

- (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. Food and beverages consumed at a single setting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources section §112.3148, Florida statutes and the Florida Administrative Code as may be amended.

According to the information you have provided, flight privileges, allowing immediate family members of airline employees to fly for free, space permitting, to any destination serviced by the airline, are a bargained for benefit of your husband's employment contract with AirTran and now, Southwest Airlines. In the context of this situation, flight privileges are part of an airline employees benefit package as much as health insurance or vacation days. Accordingly, free flights on either airline, as accepted in accordance with the terms and conditions as outlined in your husband's employment contract, are not a gift for the purposes of the code of ethics; they are an item of economic value given for adequate and lawful consideration.

Alternatively, your attendance at the employee indoctrination event in Texas is an indirect gift from Southwest airlines. While attendance at the employee event in Texas may be related to your husband's employment with the company, it is not a part of his benefit package and as such is a "gift" according to the code of ethics. Accordingly, while you may attend the conference, if the value of your trip (excluding airfare) exceeds \$100, you must file a gift disclosure report by November 1.

The ethics commission has previously addressed valuation issues and has determined that for purposes of valuation, §112.3148 is relevant<sup>2</sup>. As of June 1, 2011, the revised code of ethics specifically references §112.3148 in §2-444(f) Gift reports. In addressing valuation of gifts, Florida Statute §112.3148(7) states:

- (a) The value of a gift provided to a reporting individual or procurement employee shall be determined using actual cost to the donor, less taxes and gratuities.
- (b) Compensation provided by the donee to the donor, if provided within 90 days after receipt of the gift, shall be deducted from the value of the gift in determining the value of the gift.

<sup>2</sup> RQO 10-005, RQO 10-024, RQO 11-017

- (e) Lodging provided on consecutive days is considered a single gift.
- (i) Except as otherwise specified in this section, a gift shall be valued on a per occurrence basis.

For example, a family of four, one of the family members being a county employee, attends a conference for fictional airline "Palm Beach Air." The best available rate listed on the conference hotel website is \$100 per night and the conference lasts for four days. Each family member receives \$20 for food and beverage per day and the family flies at no cost according to the standard airline employee benefit package. Following the standards outlined by Florida Statutes §112.3148(7) the county employee would calculate the value of the gift as summarized below.

Gifted Item	Cost to Palm Beach Air	Total Gift Value to County Employee (4 days)
Hotel (4 nights)	\$100/night/family of 4	\$100/person (total room cost divided by occupancy)
Food and Beverage	\$20/day/person	\$80/person
Total	\$720/family	\$180/person

Based upon the hypothetical provided above, the county employee received an indirect gift of \$180 from Palm Beach Air. In order to comply with the Palm Beach County Code of Ethics, after receiving a gift valued at more than \$100 dollars, the County employee must report a gift of \$180 on their annual gift reporting form. Again, a county employee may not accept a gift of *any amount* for "an official action taken" or "duty performed."<sup>3</sup>

Finally, because you have regular, direct contact in your official position with your husband's employer, an additional section of the code is implicated.

**Sec. 2-243. Prohibited Conduct.**

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
  - (2) His or her spouse or domestic partner, household member or persons claimed as dependants on the official or employee's latest individual federal income tax return, *or the employer or business of any of these people.* (emphasis added)

You must be very careful not to use your position as Assistant Airport Properties Manager to financially benefit your spouse's employer. This provision of the code is of special importance because your county position requires you to have ongoing contact with PBI leasees, AirTran and Southwest. For example, if Southwest or AirTran were to renegotiate their leases at PBIA, any use of your official position or office, any action that you make take or influence you may exert that would financially benefit either airline in a manner "not shared with similarly situated members of the general public" would violate the misuse of office section of the code.

<sup>3</sup> Section 2-444(e)

IN SUMMARY, based on the facts and circumstances you have submitted, the Palm Beach County Code of Ethics does not prohibit you from attending the Southwest Airlines conference. Southwest Airlines has contracts with the county, but is not a county vendor; a vendor is defined as a person or entity that leases or sells property to the county. Here, Southwest leases property from the county. You must report any gift in excess of \$100 received from Southwest on your annual gift reporting form. Flight privileges obtained through your husband's employment contract are not gifts for purposes of the code of ethics and may be accepted in accordance with the terms of his contract. You must take great care not to give Southwest or AirTran a special financial benefit. Finally, you may not accept anything of value because of an "official action taken" or "duty performed."

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 questions in this matter.

Sincerely,



Alan S. Johnson  
Executive Director

ASJ/mcr/gal