



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

June 3, 2011

Burt Aaronson, Commissioner
Palm Beach County, District 5
301 N. Olive Avenue
West Palm Beach, FL 33401

Re: RQO 11-023
Gift Law, Misuse of Office

Dear Commissioner Aaronson,

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

YOU ASKED in your letter dated May 19, 2011, whether it is a violation of the Palm Beach County Code of Ethics for you to raise funds on behalf of the Florida Democratic Party.

IN SUM, based on the fact that the Florida Democratic Party is specifically authorized under state law to accept campaign contributions¹, you are not prohibited under the Palm Beach County Code of Ethics from engaging in fundraising activities for the Florida Democratic Party, so long as such solicitation of funds is not done in a manner that violates Section 2-443 (a), Prohibited conduct, or (b), Corrupt misuse of official position.

THE FACTS as we understand them are as follows:

You are the elected Palm Beach County Commissioner for District 5. The Florida Democratic Party has requested that you assist them by raising funds on their behalf. You are a member of the Democratic Party of Florida, but are not an officer or director. Scott Arceneaux, Executive Director of the Florida Democratic Party, advised you in a letter dated March 24, 2011, that their legal counsel has stated that there is no legal impediment to you raising money for the Florida Democratic Party. You attached a copy of this letter to your request for an advisory opinion.

THE LEGAL BASIS for this opinion is found in the following relevant 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

¹ Florida Statutes (2010), §103.091, Political Parties, and §106.03, Registration of Political Committees Electioneering Communication Organizations, §106.08, Contributions; limitations on, and §106.11, Definitions.



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than one hundred dollars (\$100) 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.* (Emphasis added)

- (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.

(1) Exceptions. The provisions of subsection (g) *shall not apply* to: (Emphasis added)

- a. Political contributions specifically authorized by state or federal law;

Under Section 2-444(g) (1) of the Code of Ethics, political contributions are specifically exempted from the definition of "gift." Therefore, solicitation of donations for political parties do not fall within the gift prohibition portion of the Code, even when solicited from vendors, lobbyists, or principals and employers of lobbyists.

However, under Section 2-443(a), Misuse of office, and (b) Corrupt misuse of official position, you are prohibited from using your official position to give a special financial benefit to yourself, a relative, household member, spouse or domestic partner, or any of their employers, an outside employer or business of yours or your spouse or domestic partner or someone you know works for one of these entities, creditor or debtor, customer or client of your outside business, or a non-profit organization if you or your spouse are a director or officer of that organization . In addition, you may not corruptly use your official position to obtain a special benefit for anyone in exchange for a political donation.

THE RATIONALE for exempting campaign contributions from the gift laws can be found in both State and Federal law. It is well established that supporting a political candidate financially is speech, and represents political expression at the core of the electoral process.² Any law that burdens the right of association and free speech may be upheld only if it serves a compelling government interest and is narrowly tailored to serve that interest.³

The above sections of the Code of Ethics are narrowly tailored to prevent any *quid pro quo* or other corrupt use of an official or employee's position to gain a special financial benefit for that employee or official, or for any other person, entity or organization. As such, they do not prohibit you from engaging in political fundraising, so long as you do not use the authority of your office to grant any "special benefit" to those who choose to donate to the Democratic Party of Florida.

² *State v. Dodd*, 561 So.2d 263 (Fla.1990) (citing *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990)).

³ *State by Butterworth v. Republican Party of Florida*, 604 So. 2d 477 (Fla. 1992) (citing *EU v. San Francisco County Central Democratic Committee*), 489 U.S. 214 (1989).



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IN SUMMARY, you are not prohibited under the Palm Beach County Code of Ethics from engaging in fundraising activities for the Florida Democratic Party, so long as the solicitation of funds is not done in a manner that violates Section 2-443 (a) Misuse of public office, or (b) Corrupt misuse of official position.

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