



Palm Beach County Commission on Ethics

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Executive Director

Alan S. Johnson

May 31, 2011

Mr. Ralph DiGiacomo, Software Support Analyst
Village of Royal Palm Beach
1050 Royal Palm Beach Blvd.
Royal Palm Beach, FL 33411

Re: RQO 11-025-OE
Outside Employment

Dear Mr. DiGiacomo,

Your request for an advisory opinion from the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows.

YOU ASKED in your email dated May 25, 2011 whether you, as a Software Support Analyst for Royal Palm Beach, may operate an outside computer repair business, RD3 Technology (RD3), without violating the code of ethics for Palm Beach County. RD3 does not have contracts with Royal Palm Beach and you complete all work for RD3 during non-government time. You indicated that your outside employment has been approved by your direct manager and the Village manager of Royal Palm Beach.

IN SUM, based on the facts you have submitted, as long as your outside business does not enter into any contracts or other transactions for goods or services with the Village of Royal Palm Beach, you are not in violation of §2-443(d), contractual relationships, by operating your business outside of municipal business hours. Notwithstanding, you cannot use your official position as a municipal employee in any way to obtain a financial benefit for yourself, or your outside business or its customers or clients, as defined in §2-444(a) *Misuse of public office or employment*.

THE FACTS you submitted are as follows:

You are a Software Support Analyst for the Village of Royal Palm Beach and owner of RD3 Technology (RD3), a computer repair business. From time to time, Village of Royal Palm Beach co-workers have approached you and asked if you could fix their personal computers. You pick up their computers like any other client, work on their systems outside of non-municipal work hours and then return them to your fellow employees.

You stated that, in accordance with existing Royal Palm Beach Human Resources Policies, you informed your manager of your outside business and both your immediate manager and the Village Manager of Royal Palm Beach approved your outside employment.



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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:

Section 2-442. Definitions

Outside employer or business includes:

- (1) Any entity other than the county, the state, or any other federal regional, local, or municipal government entity of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced.

As you stated, RD3 technologies is your outside business. It is a non-governmental entity from which you receive compensation from the services you provide. The following section of the Palm Beach County Code of Ethics addresses the restrictions imposed on contracts between an outside employer or business of municipal and county employees and the county or municipal government that they work for.

Section 2-443 (d) *Contractual relationships*:

No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency, or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business.

Section 2-443 (d) prohibits officials and employee from entering into "any contract or other transaction for goods or services with the county" through their outside employer or business. Section 2-443(d) is designed to prohibit public employees or officials from benefiting financially through their employment as public servants. You maintain that the work that you do is personal to the individual and is not a transaction or contract entered into with Royal Palm Beach.

Section 2-443(a) prohibits you, as public employee, from using your official position to obtain a special financial benefit "not shared with similarly situated members of the general public." In addition to a financial benefit to yourself, this prohibition extends to your outside business or employer as well as any customer or client, if you provide over \$10,000 in goods or services to that customer or client over the course of 24 months. Even if there is no prohibited contractual relationship with your municipality, you must take great care not to misuse your office for the financial benefit of your clients or your business.



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IN SUMMARY, based on the information you provided, you are not prohibited from engaging in your business under §2-443(d). Nor are you required to obtain a waiver under the code of ethics since you do not transact business with your municipality. However, you must be careful not to use your official position to gain a special financial benefit, not available to similarly situated members of the general public, either to your business or yourself personally.

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