



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
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Executive Director

Alan S. Johnson

June 3, 2011

Michele Thompson, Leisure Services Director
City of Greenacres
525 Swain Blvd.
Greenacres, FL 33463

Re: RQO 11-026
Prohibited Contracts

Dear Ms. Thompson,

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

YOU ASKED in your email dated May 25, 2011, whether, as the Director of the City of Greenacres Leisure Services Department, allowing Palm Beach State College to use city-owned classroom facilities under the management of your department presents a conflict of interest where you are also employed as a part-time adjunct instructor at the college. COE staff received additional information pertaining to this issue during telephone conversations with you and with City Manager Wadie Atallah.

IN SUM, based on the facts you have submitted, you are not prohibited from allowing Palm Beach State College (PBSC), a government entity, to use classrooms owned by the City of Greenacres which are under the supervision and control of the Leisure Services Department, even where you, as the department director, also work part-time as an adjunct instructor for the College. However, as an employee of Greenacres, you may not benefit financially from this arrangement in a manner not shared by similarly situated members of the general public.

THE FACTS as we understand them are as follows:

You are employed as the Director of Leisure Services for the City of Greenacres (Greenacres). Since 2002, you have also been employed as a part-time adjunct instructor for Palm Beach State College. Starting in 2009, Palm Beach State College has used classrooms owned by the City of Greenacres, under the supervision and control of the Leisure Services Department, as a testing center on Saturdays during the summer term when their Lake Worth campus is closed. You advised that while the city does not charge the college any rent for this usage, it does charge a fee for staffing the classroom after hours where necessary. Not charging an additional fee for use by another public entity is standard policy for Greenacres. Since September 2009, the college has paid the City of Greenacres \$2,670 under this use agreement. You further advised that a member of your staff at Leisure Services coordinates all rentals and facility usage, including the arrangement with PBSC. Finally, you advised that you receive no additional compensation for this usage under the agreement, from either Greenacres or PBSC, and that

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your department uses part-time recreational aides to staff the facility on Saturdays when PBSC is using the classrooms.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics, which took effect on June 1, 2011:

Sec. 2-442. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. (Emphasis added)

Outside employer or business includes:

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. (Emphasis added)

Sec. 2-443. 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: (Emphasis added)

(1) *Himself or herself;* (Emphasis added)

(4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business; (Note: As stated earlier, under Section 2-442, PBSC is not considered an outside employer or business under this Section)

You are an employee of a Palm Beach County municipality, and therefore subject to the jurisdiction of the Palm Beach County Code of Ethics under Section 2-442.

As discussed in an earlier advisory opinion, Palm Beach State College is included in the Florida College System and established by state statute as a part of the executive branch of state government. The code of ethics prohibits contracts between municipal employees or their outside



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employer or business and the employing municipality. Specifically, Section 2-442 exempts other governmental entities from the definition of outside employer or business.¹


Because PBSC is specifically exempted from the definition of outside employer or business under the Code of Ethics, the arrangement between Greenacres and PBSC to use city classrooms under your control as Director of Leisure Services is not prohibited, even though you work part-time for PBSC as an adjunct instructor. However, under Section 2-443(a)(1), as the Director of Leisure Services, you may not use your official position to benefit yourself. Therefore, while the City of Greenacres may enter into an agreement to allow PBSC to utilize their classrooms and staff, as the Director of the department who maintains control over those classrooms, you may not personally receive additional payment for staffing this facility during this use. Because of your position as Director and your control over the staff members who coordinate use of these facilities, this would constitute an improper "special financial benefit" to you, and would violate this section of the Code of Ethics.

IN SUMMARY, based on the information provided, because Section 2-442 of the Code of Ethics specifically exempts other governmental entities from the definition of "outside employer or business," and as part of the executive branch of state government, Palm Beach State College by statute falls within this definition, the City of Greenacres is not prohibited by the code of ethics from allowing the college to use or lease city-owned classrooms, even where the classrooms are under the direction and control of the Leisure Services Department, and you, as the Director of this department, are also employed as an adjunct instructor by the college. Notwithstanding, you may not use your public position to obtain a special financial benefit through this arrangement.

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

¹ RQO 10-037 OE