



Palm Beach County Commission on Ethics

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July 8, 2011

Leonard G. Rubin, P.A.
Northpoint Corporate Center
701 Northpoint Parkway, suite 209
West Palm Beach, FL 33407

Re: RQO 11-028
Village of North Palm Beach Country Club Employee Tips

Dear Mr. Rubin,

The Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting held on July 7, 2011.

YOU ASKED in your correspondence dated May 31, 2011 whether employees of the Village of North Palm Beach Country Club, a municipal golf course, may accept tips in the normal course of their employment without violating the Palm Beach County Code of Ethics. Additional information was submitted by e-mail on June 6 including "Personnel action forms", "job descriptions" and "conditional offers of employment" referencing compensation to include hourly salary plus tips.

IN SUM, based on the information you provided, the Ethics Commission opined that city employees specifically hired for service related jobs where the negotiated compensation includes salary or hourly wages plus tips, where such arrangements also reflect standard compensation practices within the service industry, may continue to accept service tips without violating section 2-444(e) of the Palm Beach County Code of Ethics.

THE FACTS as we understand them are as follows:

You are the Village Attorney for the Village of North Palm Beach (The Village). The Village owns and operates the Village of North Palm Beach Country Club (Country Club), which includes a golf course, tennis facility, pool, restaurant and lounge, and banquet facility. In reviewing the Palm Beach County Code of Ethics, as amended to apply to municipalities, The Village had concerns regarding the application of the code to employees who customarily receive tips for services rendered at the Country Club.

The Village does not have a standard employment contract with service employees at the Country Club; however, by custom and practice, tips have been a contemplated part of their overall compensation package. You provided samples of official personnel documents which specifically reference hourly salary plus tips for "servers" at the Country Club. The sample documents referenced job title, pay grade and employment status. For example, a part-time server was offered employment at the Country Club at a pay rate of "\$4.23/Hourly + tips." You also indicated that "new hire paperwork for the outside golf attendants and the tennis/golf professionals do not specifically indicate the receipt of tips, although tips are customary for these positions. The Village will, however, begin to specifically reference tips on all future paperwork."

THE LEGAL BASIS for this opinion may be found in the following relevant code sections:

Sec. 2-442 Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid.

Sec. 2-444(e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

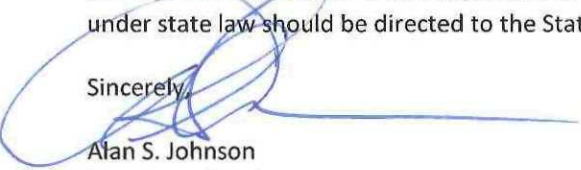
THE RATIONALE for allowing gratuities as part of the compensation package for Country Club employees is grounded in a reasonable interpretation of what constitutes an "official public action" or "legal duty" on the part of a public employee under these circumstances. First, the underlying basis for compensation of service providers within the context of a restaurant, golf course or country club contemplates a low hourly salary plus gratuities for service. The commission acknowledges the common place fact that gratuities are a normal and customary means of compensation for service industry employees, whether public or private.

Previously, this commission was asked by a county employee whether he could accept two tickets (unsolicited) to a play in appreciation for his helping the playwright understand the Everglades and archaeological procedures in Palm Beach County.¹ The Commission opined that the employee was not permitted to accept the theater tickets as this constituted a gratuity tied to an official act in helping the playwright obtain information. We note that such a gratuity was neither a contemplated part of the employee's compensation package nor was it an industry standard or otherwise customary in this context. Gratuities for restaurant or country club service providers, on the other hand, are a customary form of compensation, and as such may be distinguishable from the earlier opinion. In addition, The Village clearly contemplates tips and gratuities to be a significant and accepted part of the service provider's compensation package.

IN SUMMARY under the facts submitted, the Code of Ethics does not prohibit a service employee, employed by a municipality, to accept tips and gratuities for providing standard and customary services at a municipal country club, where tips and gratuities are an officially contemplated basis for the employee's overall compensation, and is an industry standard or otherwise customary in this context.

This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances that you have submitted. It 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.

Sincerely,


Alan S. Johnson
Executive Director

ASJ/gal

¹ RQO 10-031