



# Palm Beach County Commission on Ethics

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**Executive Director**

Alan S. Johnson

August 5, 2011

Kimberly Mitchell, City Commissioner  
City of West Palm Beach  
401 Clematis Street  
West Palm Beach, FL 33401

Re: RQO 11-029  
Misuse of Office/Gift Law

Dear Commissioner Mitchell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on July 7, 2011, continued the matter and rendered its opinion at a public meeting held on August 4, 2011.

YOU ASKED in your email dated June 1, 2011, whether serving on the board of directors of West Palm Beach Family Zone, a local non-profit organization created a conflict of interest with your service to the City of West Palm Beach as a City Commissioner, and additionally, whether you could continue to fundraise on behalf of West Palm Beach Family Zone (WPBFZ).

IN SUM, as an elected official you are prohibited from using your official position as a City Commissioner to give a special financial benefit, not shared with similarly situated charitable organizations in the community, to a non-profit organization of which you are an officer or director. Lending your name and official title to a fundraising effort would per se constitute using your elected office to specially financially benefit WPBFZ. Therefore, in order to use your official title to solicit donations on behalf of WPBFZ, you would need to resign your position with the charity. In the alternative, should you remain as an officer or director, any solicitation would need to be in your name without reference to your public title. This would apply directly to you, as well as anyone indirectly soliciting on your behalf.

Insofar as the gift law is concerned, provided you are not an officer or director of the charity, you are not prohibited from using your official title in soliciting or accepting donations on behalf of WPBFZ. Likewise, you are not prohibited from soliciting or accepting donations while maintaining your position with the charity, provided that you do so in your private and not titled capacity. If you solicit donations, directly or indirectly, in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of West Palm Beach, you (or the charity if solicitations are made in your name) must maintain a record of the solicitations from City vendors, lobbyists, principals or employers of lobbyists, and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

2633 Vista Parkway, West Palm Beach, FL 33411 561.233.0724 FAX: 561.233.0735

**Hotline: 877.766.5920 E-mail: [ethics@palmbeachcountyethics.com](mailto:ethics@palmbeachcountyethics.com)**

**Website: [palmbeachcountyethics.com](http://palmbeachcountyethics.com)**

THE FACTS as we understand them are as follows:

You are a West Palm Beach City Commissioner and serve on the board of the West Palm Beach Family Zone (WPBFZ). You were a founding member of Mission Sandbox, now WPBFZ, and have actively served on its board of directors since 1998. WPBFZ works to implement anti-poverty measures in high-risk neighborhoods, specifically a 50 block span in North West Palm Beach. WPBFZ has adopted and promoted the use of the Harlem Children's Zone model, which has been used to alleviate the cycle of poverty in Harlem, New York. As a city commissioner, you have publically advocated for the adoption of this model- using public-private partnerships to end the cycle of poverty in low income neighborhoods.

While WPBFZ may apply for funding from the City of West Palm Beach, the majority of its funding comes from private donations. Over the years, you have been active in soliciting these private funds. Currently, WPBFZ is attempting to obtain matching grants from the federal government.

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

**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:

(7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

As an elected official serving the City of West Palm Beach, you may not use your official position to give "a special financial benefit, not shared with similarly situated members of the general public" to a non-profit organization of which you are an officer or director. Moreover, as an officer or director of a charitable organization, lending your name and official title to fundraise for that charity would constitute using your position *per se* to specially financially benefit WPBFZ, to the exclusion of all other charitable organizations similarly situated, resulting in a violation of the misuse of office section of the code.

Similarly, as an officer or director of WPBFZ, if any matter that would result in a special financial benefit to WPBFZ comes before the city commission, you must abstain from voting and may not participate in the discussion surrounding the issue.

Section 2-444(a) of the Palm Beach County Code of Ethics prohibits a member of a local governing body, "or any other person or business entity on his or her behalf" from knowingly soliciting or accepting, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year, from

a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the municipality.

Section 2-444(h), an exception to the prohibition against soliciting or accepting charitable contributions in excess of \$100 from vendor and lobbyist related entities states as follows:

(h) Solicitations of Contributions on Behalf of a Non-profit Charitable Organization.

- (1) Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.
- (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the Commission on Ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on Ethics. The form shall be filed within 30 days from the occurrence of the event for which the solicitation was made, or if no event, within 30 days from the occurrence of the solicitations.
- (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitations of charitable contributions described in this subsection.

The Palm Beach County Code of Ethics gift law, as revised, no longer prohibits elected officials, advisory board members and public employees from soliciting vendors, lobbyists, principals or employers of lobbyists who lobby their government when the solicitation is made on behalf of non-profit or charitable organizations, so long as a detailed log is maintained pursuant to 2-444(h). A *charitable solicitation log* can be found on our website at [www.palmbeachcountyethics.com/Forms](http://www.palmbeachcountyethics.com/Forms) and should include the following information:

- 1) Name of the charitable organization for which you are soliciting; and
- 2) Name of the person and entity that was solicited; and
- 3) The event, if any, for which the funds were solicited; and
- 4) Amount of funds solicited and pledged.

You must file this form with the Commission on Ethics office within 30 days of the charitable event or within 30 days of the solicitation if not related to an event. You may not solicit any person or entity with

a pending application before West Palm Beach. Most importantly, you must take great care that solicitations accepted on behalf of WPBFZ do not result in a *quid pro quo* for your "official action" as city commissioner.

Notwithstanding the gift law exception, the misuse of office provision specifically prohibits using your official position to specially benefit a charity if you are an officer or director. In order to fundraise using your official title, you would need to resign your position as an officer or director of WPBFZ to avoid violating the misuse of office restrictions, or in the alternative, maintain all solicitation, direct and indirect, without the use of your official title as City Commissioner. In addition, you may not use West Palm Beach staff or other municipal resources to solicit donations.


THE RATIONALE for limiting the manner of solicitation is grounded in the desire to avoid the appearance that these solicitations and donations are being made to obtain access to or otherwise ingratiate the donor to the elected official. Similarly, by prohibiting officials and employees from using their public office to give a special financial benefit to a particular charity of which they are an officer or director, the code further attempts to limit potential misuse of a public duty to treat all citizens and entities on an equal footing.

IN SUMMARY, you may not use your elected office to give WPBFZ a special financial benefit while serving as an officer or director of the charity. As an officer or director of a charity, soliciting donations on behalf of that charity using your name and official title would constitute a violation of the misuse of office portion of the code. If you choose to resign your position as an officer or director, or use only your name and not your official title to solicit on behalf of the charity, any solicitation of donations from vendors or lobbyists of West Palm Beach in excess of \$100 must be transparent in that you, or anyone soliciting in your name, must keep a detailed log of your contact with those donors and submit a copy to the Palm Beach County Commission on Ethics. In any event, you may not solicit any gift on behalf of WPBFZ in exchange for any special consideration or other "quid pro quo" in your official capacity as a City Commissioner.

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

ASJ/mr/gal