



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

July 8, 2011

Suzanne Mulvehill, Vice-Mayor
City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460-3787

Re: RQO 11-031-OE
Outside Employment

Dear Vice-Mayor Mulvehill,

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 July 7, 2011.

YOU ASKED in your email of June 2, 2011, whether as the Vice-Mayor of Lake Worth, you may serve as a Certified Business Analyst for the Small Business Development Center at Palm Beach State College (PBSC).

IN SUM, as a part of the Florida College System, Palm Beach State College (PBSC) is a state governmental entity. Governmental entities are not considered outside employers as this term is defined within the Code of Ethics. Therefore, even though Lake Worth maintains contracts or otherwise transacts business with PBSC you are not prohibited from accepting outside employment with PBSC. Notwithstanding, at all times you may not use your position as vice-mayor of the City of Lake Worth to obtain a "special financial benefit for yourself not shared with similarly situated members of the general public."

THE FACTS you submitted are as follows:

You are the vice-mayor of The City of Lake Worth and have been offered a position as a Small Business Development Consultant at Palm Beach State College (PBSC). Palm Beach State College is the host institution for the Small Business Development Center (SBDC), a governmental entity funded in part through a cooperative agreement with the U.S. Small Business Administration. The SBDC provides free counseling, advice and seminars to small business owners throughout the region. The SBDC at PBSC sets and provides your salary. Your position entails, among other things, providing one-on-one counseling to small or medium size enterprises (SME), contacting SME's in the region and recruiting SME's for the SBDC's growth acceleration program, and attending business events on behalf of the SBDC. From time to time, businesses that operate in Lake Worth, may come to the SBDC to request your advice and businesses that you have counseled may appear before you as a member of the City of Lake Worth Commission. Lake Worth employs a sealed, competitive bid process, at the completion of which staff presents the top five bids to the Commission including the low bid. The City Commission has discretion to select from among those bids.

THE LEGAL BASIS for this opinion relies on the following relevant sections of the Palm Beach County Code of Ethics.

Section 2-443. Prohibited conduct.

- (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.* (emphasis added)

The Code of Ethics prohibits employees, officials, and the outside employer or business of an employee or official from contracting with the municipality they serve, unless an exemption or exception applies.

The code defines *outside employer* in sec. 2-442

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)

The definition of *outside employer or business*, specifically excludes "county, state, or any other federal regional, local or municipal government entity." The Palm Beach County Commission on Ethics has previously addressed whether a state college or university is a government entity under the code.¹ §1001.60, Florida Statutes, establishes the Florida College system. As one of 28 public colleges in the State of Florida, PBSC is, therefore, considered a governmental entity. As a result, you are not prohibited from accepting employment with PBSC even though PBSC maintains contracts with Lake Worth.

While you may accept employment with PBSC, the college or clients of SBDC may come before you in your capacity as Vice-Mayor of Lake Worth.

The following section of the code addresses that potential conflict.

- (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:
- (1) Himself or herself;
 - (2) 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;
 - (5) A customer or client of the official or employee's outside employer or business;

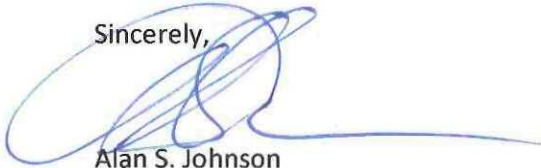
¹ RQO 10-028-OE, RQO 10-037-OE, RQO 11-026

Neither the PBSC, nor SBDC clients fall under the prohibitions of the misuse of public position section of the code as an outside business, employer or customer or client. Not only is your employer a government entity and thus exempt from the definition of *outside employer*, but the services of SBDC are free to the public. Therefore, the businesses you contact or advise on behalf of the SBDC are not *customers* or *clients* as defined by the code of ethics. Notwithstanding these exemptions, you may not use your official position to gain a special financial benefit for yourself.

IN SUMMARY, you are not prohibited from accepting the growth acceleration program consultant position with the Small Business Development Center at Palm Beach State College. Because Palm Beach State College is a government entity, it is not an *outside employer* and under the code of ethics no conflict exists. Your duty to not use your official position for personal financial benefit is ongoing.

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.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/mr/gal