



Palm Beach County Commission on Ethics

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June 24, 2011

Chuck Elder, Film Commissioner
Palm Beach County Film & Television Commission
1555 Palm Beach Lakes Blvd., Suite 900
West Palm Beach, FL 33401

Re: RQO 11-032
Gift Law

Dear Mr. Elder,

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

YOU ASKED in your email dated June 3, 2011 whether complementary tickets may be given to County Commissioners and staff to attend the "Legends Awards" portion of the 6th Annual Film Florida Conference, hosted by the Palm Beach County Film and Television Commission (FTC) at Lynn University, when these complimentary tickets are supplied directly by FTC. In addition, you also asked whether FTC officers, directors or employees are permitted to participate in fundraising events connected with the conference. You provided additional information in emails to COE staff on June 7, 2011, and in follow-up telephone conversations.

IN SUM under the facts you submitted, giving or accepting complementary tickets in connection with public events, appearances or ceremonies furnished by a nonprofit sponsor organization as well as expenditures made in connection with events sponsored by a nonprofit organization funded with public funds whose primary purpose is to encourage tourism or other economic activity within Palm Beach County is not prohibited, even if the sponsor nonprofit organization is a vendor of the county and the value of the ticket exceeds \$100 provided that the sponsor organization does not employ a lobbyist and the representative who furnishes the tickets is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. The public official or employee may not use his or her official position to offer a benefit to the organization or any sponsor of the event in exchange for the tickets. If the value of the tickets exceeds \$100, the official or employee will need to report the gift pursuant to Section 2-444 of the code, or as required under §112.3148, Florida Statutes.

While the code of ethics does not prohibit the giving or acceptance of the tickets, great care must be taken that nothing of value is exchanged because of an "official action taken" or "duty performed" which would result in a quid pro quo in exchange for the tickets.

Regarding fundraising activities, because FTC is a private non-profit corporation, the Code of Ethics does not apply to FTC or its officers, employees or board members who are not otherwise officials or public employees within the jurisdiction of the Code of Ethics.

THE FACTS as we understand them are as follows:

You are the Film Commissioner for the Palm Beach County Film and Television Commission (FTC), a registered non-profit corporation funded partially by public funds, and organized in 1989 for the purpose of supporting and cultivating the expansion of the film, television, and still photography industry in Palm Beach County, and marketing Palm Beach County as a viable film, television and still photography destination and cost effective alternative location.¹ FTC is sponsoring the 6th Annual Film Florida Conference at Lynn University and the Boca Resort and Club from June 29 – July 1, 2011. FTC is a vendor of Palm Beach County, but is not a lobbyist, principal or employer of a lobbyist. "Film Florida" is also a non-profit Florida corporation that provides a leadership role in Florida's film and entertainment industries and is not a county or municipal vendor, lobbyist, principal or employer of a lobbyist in any jurisdiction within Palm Beach County.

As part of this conference, you are holding a Legends Awards ceremony, where certain persons who have made a significant contribution to Florida's film and entertainment industry will be honored. In an effort to recognize the importance of the film and television industry for Palm Beach County, you wish to give County Commissioners and certain county staff complementary tickets to attend the Legends Awards ceremony. The cost of tickets to attend the Legends Awards ceremony portion of the 6th Annual Film Florida Conference is \$50 each.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Sec. 2-444. Gift law.

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, *shall knowingly solicit or accept* directly or indirectly, *any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.* (Emphasis added)
- (2) No lobbyist, *vendor* or principal or employer of a lobbyist that lobbies the county or a municipality *shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality.* (Emphasis added)
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) *shall report that gift* in accordance with this section. (Emphasis added)

¹ Palm Beach County Film & Television Commission website, (www.pbfilm.com)

(1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.

(2) *All other officials and employees who are not reporting individuals under state law.*

(b) *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics.

(g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, *entertainment, hospitality*, item or promise, or in any other form, without adequate and lawful consideration. (Emphasis added)

(1) Exceptions. The provisions of subsection (g) shall not apply to:

(i) Expenditures made in connection with an event *sponsored by a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities* for the benefit of Palm Beach County or the municipalities as applicable, *provided the sponsor organization does not employ a lobbyist*, and further *provided that the invitation to the event is made by a representative of the sponsor organization and the representative is not otherwise a vendor, lobbyist, principal or employer of a lobbyist.* Notwithstanding the exception as provided in this subsection, the expenditure must be disclosed in accordance with the gift law reporting requirements of subsections 2-444(f)(1) and (f)(2). (Emphasis added)

RATIONALE: Under section 2-444(g)(1)(i) and (j) of the code of ethics, complementary attendance at nonprofit sponsored public ticketed events, appearances or ceremonies related to official county or municipal business or events where expenditures are made by sponsored nonprofit organizations funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County or the municipalities is not prohibited, provided the sponsor organization does not employ a lobbyist and the invitation to the event is made by a representative of the sponsor organization who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist.

The 6th Annual Film Florida Conference, and its Legends Awards celebration, fit within this exception to general gift prohibitions. According to the facts you have submitted, FTP does not employ a lobbyist. COE staff has verified this by consulting the Palm Beach County lobbyist registration database. Further, as the representative of FTC who will be providing the tickets, you advised that you are not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Should the value of the tickets given to an individual commissioner or public employee be greater than \$100, they may be required to report these tickets as gifts under the Code of Ethics and/or Florida law.

IN SUMMARY, based on the facts submitted, the Palm Beach County Code of Ethics does not prohibit Palm Beach County Commissioners or county staff from accepting complementary tickets to the Legends


Awards portion of the 6th Annual Film Florida Conference from the Palm Beach County Film & Television Commission (FTC), if given by a representative of FTC who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Should the value of tickets given to any individual commissioner or employee be greater than \$100, they may be required to report these tickets as gifts under the Code of Ethics and/or state law. Keep in mind that a ticket may not be given or accepted as a quid pro quo in exchange for an "official action taken" or "duty performed."

Further, the Code of Ethics does not apply to fundraising activities conducted by FTC directors, officers or employees provided they are not otherwise public officials or employees of the county or municipalities within the county.

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