



Palm Beach County Commission on Ethics

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July 8, 2011

Thomas P. Cairnes, Director of Construction
The Forbes Company
1555 Palm Beach Lakes Blvd., Suite 900
West Palm Beach, FL 33401

Re: RQO 11-034
Gift Law/Misuse of Official Position

Dear Mr. Cairnes,

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 two (2) related questions in your letter of June 8, 2011. First, whether you or your employer, The Forbes Company (Forbes), owners and operators of The Gardens Mall, are prohibited by the Palm Beach County Code of Ethics from inviting officials and employees of the City of Palm Beach Gardens or Palm Beach County to attend various charity events as guests, where the cost of attendance is paid for by Forbes. Second, whether you are prohibited under the code from providing complimentary lunches to various city employees at monthly meetings discuss a range of issues concerning the Gardens Mall and the PGA corridor area, including security and growth trends in the city.

IN SUM, public officials and employees may not accept anything of value because of "an official public action" or "a legal duty" performed or violated. Regarding gift limitations, since you are not a vendor, lobbyist, or principal or employer of a lobbyist in Palm Beach Gardens or Palm Beach County, there is no prohibition on the amount of a gift. So long as there is no "quid pro quo" or special treatment or other privilege given, or obtained by you or your employer, in exchange for tickets to charitable events or complimentary lunches, the Code of Ethics does not prohibit these gifts. However, a gift in excess of \$100 must be reported by the official or employee pursuant to the code, or Florida Statute for those who are state reporting individuals.

THE FACTS as we understand them are as follows:

You are the Director of Construction for The Forbes Company (Forbes). Forbes owns and operates the Gardens Mall (the Mall), which is located in the City of Palm Beach Gardens. You advise that neither you nor Forbes is a vendor, lobbyist or a principal or employer of a lobbyist selling or leasing services or property or otherwise lobbying either Palm Beach Gardens or Palm Beach County.

Forbes will frequently "partner" with Palm Beach Gardens and employee organizations in support of various charitable events by donating funds for such events, including Art in Public Places, Volunteer

Police Foundation events, and the Big Heart Brigade Chili Cook Off, which is sponsored by Palm Beach Gardens' firefighters. Several times per year, Forbes will also donate sponsorship funds or purchase VIP admission to other charitable events, such as golf tournaments, the Red Cross Ball, Music for the Children, and other like events, where entry fees range from a few hundred to a few thousand dollars. On behalf of Forbes, you will often invite county or city officials or employees to attend these events as guests. You have stated that Forbes does not and has not used these complementary admissions in any attempt to garner special favor with county or city officials or employees, and neither Forbes nor you personally ask for or receive any "quid pro quo" or special treatment because of these donations.

In addition, you host monthly meetings with public officials and employees, including the Palm Beach Gardens Police Chief and employees of the Growth Management, Building or Administrative Departments, where you discuss crime and growth trends within the city and their effect on the tenants of the Mall and the PGA corridor area in general. You indicate that the purpose of these meetings is to obtain information that the Mall needs to assess its future security, as well as to what type of businesses the Mall should consider adding in the future. Complementary lunch is provided by you at these meetings.

Lastly, you advise that you and other Forbes employees serve on various business and non-profit boards, such as the PGA Corridor Association, The Northern Palm Beach County Chamber of Commerce, and the Nicklaus Children's Hospital Fund Board, and that some of the members of these boards may be lobbyists or vendors. However, when Forbes purchases either lunch at a meeting, or admission to charity events, you pay for these items from your reimbursed business expense account, and any tickets, passes or admissions you disseminate are directly from Forbes, not through other Forbes' employees who may be members of these boards.

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

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. (Emphasis added)

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager or employee.

Sec. 2-443. Prohibited conduct.

(b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to

corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties. (Emphasis added)

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.
- (a)(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 or employer of a lobbyist knows is an official or employee of that county or municipality.

There are similar limitations on such gifts to advisory board members regarding vendors, lobbyists, or principals or employers of lobbyists who contract with or come before a board, or the government department subject to the board's authority.

- (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)
- (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) A ticket, pass or admission in connection with public events, appearances or ceremonies related to official county or municipal business, if furnished by a nonprofit organization of such public event, or if furnished pursuant to a contract between the event sponsor and the county or municipality as applicable provide that sponsor organization does not employ a lobbyist, and further provided the ticket, pass or admission is given by a representative of the sponsor organization who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist.

The gift law prohibitions and exceptions all contain a common theme. Public officials and employees may not accept anything in exchange for the past, present and future performance of their legal duties. In addition, they may not accept, in the aggregate, more than \$100 during the calendar year from

vendors, lobbyists, or principals or employers of lobbyists who lobby, sell or lease to their government employer. In fact, the code applies the \$100 annual gift limit to prohibit the donor vendors, lobbyists, or principals or employers of lobbyists who lobby the public servant's government (or in the case of an advisory board member, the board or relevant department) from giving such aggregate gifts. Therefore, you must take great care to not "pass through" or otherwise indirectly give a prohibited gift on behalf of a sponsor who is a relevant vendor, lobbyist, or principal or employer of a lobbyist.

THE RATIONALE for limiting the value of gifts given by vendors, lobbyists or principals or employers of lobbyists to public officials and employees is based on reducing the chance that such gifts are for the purpose of improperly influencing the official or employee in the exercise of their official duties. When such gifts are given by persons who are not vendors, lobbyists, or principals or employers of lobbyists, this concern is reduced, and so the value of such gifts is not restricted. However, the requirement that such gifts are not given for an improper purpose such as to corruptly influence an official or employee in performance of their official duties remains.


For gifts that are not otherwise prohibited, employees and officials are required to report individual gifts received in excess of \$100 either pursuant to state gift law reporting requirements, or annually pursuant to the county ethics code. This requirement assures that non-exempt gifts of this nature are transparent and subject to public scrutiny.

IN SUMMARY, based on the facts you have submitted, since neither you personally, nor Forbes, are a vendor, lobbyist, or principal or employer of a lobbyist doing business with either The City of Palm Beach Gardens or Palm Beach County, the Code of Ethics does not prohibit you from giving, or officials or employees of Palm Beach Gardens or Palm Beach County from accepting, complementary tickets to charity events, or complementary lunches at meetings, so long as these items are provided to the official or employee directly from Forbes through you, and as long as these items are not; provided to "corruptly" and improperly influence officials or employees in carrying out their official duties, or indirectly provided by a prohibited source. However, if the value of admission to a charity event, or the value of any single complementary lunch is greater than one hundred dollars (\$100), the official or employee receiving this benefit may have to report this information under Section 2-444(f) (1) or (2) of the code or applicable state law.

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