



Palm Beach County Commission on Ethics

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September 6, 2011

Bonnie Jensen, Esquire
400 Executive Center Drive, Suite 207
West Palm Beach, Florida 33401

Re: RQO 11-035
Misuse of Office/Travel Expenses/Gift Law

Dear Ms. Jensen,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on September 1, 2011.

YOU ASKED in your submission dated June 16, 2011 whether Trustees for the Palm Tran/ATU Local 1577 Pension Plan ("Pension Plan") as members of the Palm Tran Pension Board (PBPT) were subject to the jurisdiction of the Palm Beach County Commission on Ethics and Code of Ethics. To the extent that trustees are subject to the code, what are their duties and responsibilities regarding PBPT related seminars and conferences?

IN SUM, Palm Tran, Inc., is considered a Palm Beach County Department and its employees are paid by the Palm Beach County Board of County Commissioners (BCC). The Palm Tran Pension Board (PBPT) was not created by the BCC and its trustees were not appointed by the BCC. Therefore the PBPT is not an "advisory board" nor is a trustee considered an "official" within the meaning of the Code of Ethics.

However, trustees of the PBPT are employees of Palm Beach County. Their decisions impact the county budget and they are paid a county salary while engaged in PBPT activities. Therefore, the Commission on Ethics finds there to be sufficient nexus between a trustee's public employment and the PBPT to place them within the jurisdiction of the misuse of office sections of the Code of Ethics. Code sections involving acceptance of travel expenses and acceptance or solicitation of prohibited gifts apply only where the travel expenses or gifts involve vendors, contractors, bidders, proposers, service providers and lobbyists, as applicable, who do business with Palm Beach County, including Palm Tran, Inc. Jurisdiction does not extend to those doing business exclusively with PBPT. However, any non-prohibited gift accepted by a Palm Tran, Inc. employee in excess of \$100 is reportable pursuant to the annual reporting requirements of the Code of Ethics.

THE FACTS as we understand them are as follows:

You are an attorney for the Palm Tran Pension Plan. Palm Tran, Inc., (PT) formerly Florida Transit Management and Co-Tran, is responsible for providing Transit services in Palm Beach County. In 1998, the County and Palm Tran, Inc. stipulated that they were joint employers of certain PT bargaining unit

employees. This stipulation was accepted by the Florida Public Employees Relations Commission and since that time, the County has been identified as a joint employer of PT employees. Employees of PT are paid by and receive checks from the Palm Beach County Board of County Commissioners (BCC).

In February of 1996, Palm Tran, Inc. assumed the employer obligations of Florida Transit Management. The Palm Tran Pension Board (PTPB) administers the pension plan for collective bargaining unit employees and has broad trust powers. According to the Trust Agreement, Board members are responsible for the general supervision of the fund and the plan, have the power to formulate, adopt and administer the plan for employees and their beneficiaries, establish rules and regulations for the administrative operation of the fund and amend the Pension Plan from time to time as outlined by the agreement. Article V, §5.3 of the ATU 1577 Trust Agreement provides:

The Trustees shall hold, manage, and protect the Fund and collect the income therefore and contributions thereto. The Trustees shall have the power, in their sole, absolute and complete discretion, to invest or reinvest all or any part of the principal and income, in such securities, or in such property, wherever situated, as the Trustees shall deem advisable...

The Board consists of four Trustees; two trustees are appointed by the County Administrator and two trustees are representatives of the union. Union representatives are the president of the Union and a Union officer/representative designated by the Union President. Union officers are provided paid time off by the county for the purpose of participating in union activities, including serving on the PTPB. Currently, all Pension Plan Trustees are also Palm Beach County employees.

Effective July 1, 2011, local government sponsors of defined benefit pension plans, in this case Palm Beach County, may not reduce contributions required to fund the normal cost of the plan. Senate Bill 1128, which made a series of changes to Florida's local government defined benefit retirement plans, requires that the employer is responsible for funding the "normal cost" even if plan investment losses require that the employer contribute a greater percentage per employee.

PTPB Trustees are often invited to attend various conferences around the state. The PTPB is a member of the Florida Public Pension Trustees Association (FPPTA). The FPPTA sponsors one conference and two educational seminars each year and members of the Association may attend these events. FPPTA membership includes plan trustees, vendors and service providers for public pension plans. There is a registration fee for attendance at these events, however public pension plan vendors and service providers contribute money to help pay for functions. As noted on the FPPTA brochure submitted to commission staff, "Sponsorship fees help pay for functions but do not cover the total cost."

In addition to general sponsor benefits, such as a listing in the FPPTA magazine or ribbon affixed to FPPTA name tags, vendors and service providers may also pay to be an exhibitor. Often these vendors provide cookies, ice cream bars, pens, key chains and post-it pads. Among the vendors registered to sponsor the conference, there are vendors of the pension plan alone, vendors of the county and the pension plan and vendors of the county only as well as future potential service providers to either the Pension Plan or the county. Both the FPPTA and vendors hold raffles or giveaways in addition to the promotional materials distributed in the exhibition hall. The gifts associated with these raffles, such as a hammock, have historically been valued at more than \$100.

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

Section 2-442 defines *Advisory board* to mean "any advisory or quasi-judicial board created by the board of county commissioners, by local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies." The Palm Tran Pension Plan Board of Trustees was created by state statute, rather than an act of the county's legislative body and as such is not an advisory board.

Section 2-442 defines "officials" as "... members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of (a) local municipal governing body, as applicable, to serve on any advisory quasi-judicial, or any other board of the county, state or any other regional, local, municipal, or corporate entity."

Members of Pension Plan Boards appointed by the legislative bodies of county or municipal governments are subject to certain requirements of the code of ethics as "Officials." Here, Pension Plan Trustees either serve because of their union membership or are selected by the County Administrator, not the BCC. The County Administrator is not considered a mayor or chief administrative officer. Accordingly, PYPB Trustees are not subject to the Code of Ethics as officials or advisory board members.

However, perhaps uniquely to this particular pension board, all members of the board are current county employees and subject to the requirements of the code of ethics as employees of the county. While the PTPB is a separate and semi-autonomous entity from the county, should the Pension Plan be underfunded the county is partially responsible for remedying the deficit under the requirements of Senate Bill 1128. In addition, time spent on PTPB matters is compensated by the county as paid administrative leave. Therefore, pension board members are receiving their regular county salary while at meetings, conferences and seminars. The fiscal responsibility incurred by the trustee's public employer coupled with the payment of county salary for PTPB matters provides a sufficient nexus between the public employment and outside union activity to incur limited jurisdiction over the PTPB Trustees.

Therefore, as employees of Palm Beach County, PTPB Trustees are subject to the code of ethics in as much as their actions as trustees will affect the financial stability and budget of their government employer and they receive compensation from their public employer.

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:
- a. *Yourself*
 - b. 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 Palm Beach County employees, PBPT trustees may not use their official position to obtain a special financial benefit not shared with similarly situated members of the general public. In this instance, PBPT Trustees are eligible to sit on the board as a result of their employee status and decisions they make as a board have a financial effect on their public employer. Should Plan Board members use their position as a trustee to give themselves a special financial benefit or, in the case of the two union representatives, give their union a special financial benefit, they could be in violation of the code of ethics.

Section 2-443(f) Accepting travel expenses.

No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees, and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners of local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

Employees of Palm Beach County who are members of the PTPB cannot accept travel expenses from a "contractor, vendor, service provider, bidder or proposer" of Palm Beach County without obtaining a waiver from the BCC. This section applies to trustees as county employees, therefore, there is no similar prohibition involving contractors, vendors, etc. of the PTPB who are not also doing business with the county.

Section 2-444. Gift Law

Section 2-444(g) defines a gift as the transfer of anything of economic value, including hospitality, food and drink. Section 2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, *"a 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 ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the ... county."*

Section 2-442 defines a vendor as a person or entity who sells or leases goods or real or personal property to the county or a person or entity with a pending bid proposal or an offer to sell or lease goods or real or personal property to the county.

County employees are not prohibited from accepting items of value from a county vendor, so long as the amount of the gift does not exceed \$100 and over the course of the calendar year, and they do not *accept or solicit anything of value* from a vendor, lobbyist, principal or employer of a lobbyist in exchange for the past, present or future performance of their job. In this situation, there may be vendors of the Palm Tran Pension Board who are present at the conference that are not vendors of the county. Keeping in mind the requirements of the misuse of office section discussed above, county employees are not prohibited from accepting gifts from non-vendors, lobbyists, principals or employers of lobbyists who do not lobby, sell or lease to the county, but must report the gift should its value exceed \$100.

IN SUMMARY, as employees of Palm Beach County, trustees of the PBPT are required to comply with the Palm Beach County Code of Ethics. While they are not considered "officials" within the definitions of the code, and The PBPT is not considered an "advisory board", trustees must still comply with those provisions of the code applicable to them as employees. In addition, there is a sufficient nexus between

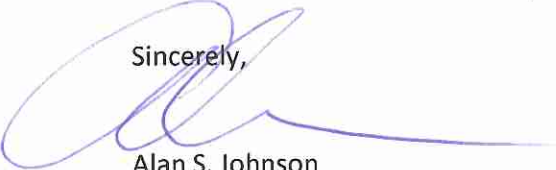
their duties as trustees and status as county employees to require adherence to the financial and corrupt misuse sections of the code in matters involving the PBPT.

Insofar as accepting travel expenses, soliciting or accepting prohibited gifts and gift reporting requirements, PBPT trustees who are county employees must adhere to the code. Specifically, trustees must comply with code provisions regarding acceptance of travel expenses from contractors and vendors of the county or soliciting or accepting prohibited gifts from lobbyists or vendors of the county. At no time may a county employee accept a gift of any value because of the "performance of a legal duty" or an "official public action" in his or her official capacity as a county employee. Lastly, any permitted gift received by a public employee in excess of \$100 must be reported as provided in the gift law section of the code.

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