



Palm Beach County Commission on Ethics

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September 6, 2011

Peter B. Elwell
Town Manager, Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-037
Conflict of Interest/Misuse of Office

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on July 7 and again on August 4, 2011, and rendered its opinion at a public meeting held on September 1, 2011.

YOU ASKED in your letter dated June 16, 2011, whether the sibling relationship between a Town of Palm Beach Building Official and his brother, who has an ownership interest in a private firm hired by a landowner of commercial property to act as a Resident Inspector on a construction project, creates a prohibited conflict of interest under the Code of Ethics, where the Resident Inspector is required to submit inspection and compliance reports to the Building Official, and where the Building Official is responsible for final approval of the work completed.

IN SUM, there is no per se prohibited conflict of interest created under the Code of Ethics when a Town of Palm Beach Building Official completes his inspection and compliance assessment duties, even where the "Resident Inspector" is a sibling of the Building Official, and even where that Building Official has final authority to issue the necessary compliance documents, provided that in completing his official duties, the Building Official does not act or fail to act, or influence others to act or fail to act, in any manner that will result in a special financial benefit for his brother that is not shared by similarly situated members of the general public (other landowners represented by different resident inspectors). However, the issue of an appearance of impropriety is clearly present in such an arrangement. Although matters of internal policy and procedure are not normally subject to our jurisdiction we concur with your suggestion that this issue be dealt with by requiring this particular company acting as a Resident Inspector to report directly to the Town's Director of Planning, Zoning and Building who would assume the inspection and compliance duties of the Building Official.

THE FACTS as we understand them are as follows:

You are the Town Manager for the Town of Palm Beach (the Town). Under your Town Code, when a private party is engaged in any construction project within the Town that requires a permit, they are given the option of employing a private resident inspector to oversee the project for the purpose of

ensuring that the work is done properly and complies with all building codes. This Resident Inspector is further tasked with filing weekly reports with the head of the Town's Building Department (Building Official), as well as documenting compliance with the Town Building Codes. The Town's Building Official completes a final inspection of the work, and if appropriate, issues a Certificate of Completion or Certificate of Occupancy as applicable for the project. On one such commercial construction project, the landowners have hired a private company to act as their Resident Inspector. One of the partners/principals of this company is the brother of the Town's Building Official.

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

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: (Emphasis added)
 - (3) *A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;* (Emphasis added)
- (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.* (Emphasis added)

IN SUMMARY, based on the facts you have submitted, there is no prohibited conflict of interest per se under the code based solely on a sibling relationship between a Building Official, charged with assuring compliance with building codes in the Town, when a landowner chooses to hire as their authorized Resident Inspector a private company in which the brother of the Building Official has an ownership interest, so long as the Building Official does not use his official position to give his brother, his brother's company, or the landowner who employed his brother's company, a special financial benefit not shared by similarly situated residents employing other Resident Inspectors. This would include the Resident Inspector allowing his brother to advertise and attract customers through the use of the Resident Inspectors name and position.

The Commission on Ethics normally would not opine as to whether, in order to prevent the appearance of impropriety, you as Town Manager should have the Resident Inspector report to a different Town official. While the sibling relationship, without providing a special financial benefit, does not constitute a prohibited conflict under the Code of Ethics per se, it does create a strong appearance of impropriety. This is especially true if the official acts of the Building Official are of a discretionary nature. In your advisory opinion request, you had indicated that the Town was contemplating having the Resident Inspector report to a different official of the Town when this potential conflict arises. We concur with your suggestion that in cases involving this company in the role of Resident Inspector, you have the Resident Inspector report directly to the Director of Building and Zoning, or use a different Building Official in that role.

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/meb/gal