



Palm Beach County Commission on Ethics

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July 8, 2011

Jim Kuretski, Councilman
Town of Jupiter
210 Military Trail
Jupiter, FL 33458

Re: RQO 11-038
Misuse of Public Office/Conflict of Interest

Dear Councilman Kuretski,

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 e-mail dated June 17, 2011, whether being employed by Florida Power and Light (FPL) presented an inherent conflict of interest based upon customers and clients of FPL appearing before your council in most, if not all decision-making matters.

IN SUM, the code of ethics prohibits an official from using his or her official position, or voting on a matter, that would result in a "special financial benefit, not shared with similarly situated members of the general public" for a customer or client of the official's outside employer. FPL is a publicly regulated utility and maintains an effective monopoly among users of electric power in the Town of Jupiter and throughout the State of Florida. As such, most, if not all persons and entities coming before your council would be similarly situated members of the general public, insofar as their being customers or clients of your outside employer. Therefore, under these circumstances, there is no inherent special financial benefit. Notwithstanding, depending upon the facts, there could be a scenario where a specific customer or client is not similarly situated with other customers of FPL. Additionally, you must take care to avoid using your official position to give a special financial benefit to FPL. In that regard, this commission cannot opine as to speculative factual scenarios.

In addition, the fact that your outside employer may franchise with the Town of Jupiter does not make it a prohibited contractual relationship as FPL is a sole source provider of electric power to the town.

THE FACTS as we understand them are as follows:

You are an elected official with the Town of Jupiter (the Town), a municipality within Palm Beach County. Your outside employer is FPL. The Town has a franchise agreement with FPL, effectively making all businesses and residential property owners or renters within the Town users of its electrical power

supply services and thereby customers or clients of FPL. FPL likewise has franchise agreements with Palm Beach County government and most municipalities within the county (Lake Worth has its own electric utility). The circumstances make FPL effectively the sole source of electric power to individuals and businesses within the Town. You have previously disclosed and abstained from voting on matters directly involving FPL but have never abstained based upon matters involving customers or clients of FPL.

THE LEGAL BASIS for this opinion relies on the following provisions of the code:

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):
- (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;

The code defines *customer or client* in sec. 2-442

Customer or client means any person or entity to which and official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000.00)

- (c) *Disclosure of voting conflicts.* County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7)...
- (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.

(e) *Exceptions and waiver.*

- (3) The outside employer or business involved is the *only source of supply within the county or municipality* as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business... (emphasis added)

FPL is the sole source of electric supply within the Town and therefore your employment with FPL does not constitute a prohibited contractual relationship.

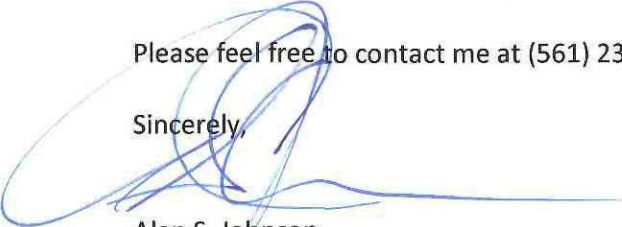
Likewise, the likelihood is that most, if not all persons and business entities appearing before you are customers or clients of FPL. While a significant number of customers will be below the approximately \$400 per month legal threshold to reach \$10,000 in 24 months, the simple fact remains that a significant portion of the business and residential population would be at or near this amount. Since those appearing before your council are similarly situated, there is no inherent conflict merely because a person or entity is a customer or client of FPL. Notwithstanding, the misuse of office provisions dealing directly with yourself or your outside employer remain applicable and depending upon the facts and circumstances may require abstention where a special financial benefit could be gained by you or FPL.

IN SUMMARY, because of the unique characteristics of a publicly regulated utility that maintains a monopoly within the community, you are not inherently in violation of the misuse of office or voting conflict provisions of the code of ethics as they apply to a "special financial benefit" for a customer or client of your outside employer. In addition, the fact that your outside employer maintains contracts with your government entity is not a prohibited contractual relationship in that your employer is the sole source provider within your jurisdiction. You have an ongoing duty to avoid using your position or voting on matters that would specially benefit you or your employer directly.

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