



# Palm Beach County Commission on Ethics

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Alan S. Johnson

September 6, 2011

Keith W. Davis, Esquire  
1111 Hypoluxo Road, Suite 207  
Lantana, FL 33462

Re: RQO 11-039  
Solicitations for Non-Profit Charitable Organizations

Dear Mr. Davis,

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 email dated June 17, 2011, whether it violates the Palm Beach County Code of Ethics for the Village of Tequesta to hold a charitable fund raising event as a community outreach program of the Village Fire Department, where such program is approved by the Village Council, organized and run by the combined efforts of a non-profit entity, off-duty employees of the Village Fire Department, and certain on-duty Village staff, and where donations to support these events are solicited from vendors of the Village of Tequesta.

IN SUM, the Village of Tequesta may organize and hold fundraising events to benefit non-profit organizations of their choosing, so long as there is no quid pro quo or other special consideration given by officials or employees to any donor for their participation, and so long as no person or entity with a pending application for approval or award currently before the Council is solicited for a donation. First, public officials or employees who are directors or officers of a non-profit organization may not use their official position, including their official title, to specially financially benefit that organization. Second, Village employees or officials who solicit donations must comply with the disclosure requirements as contained in §2-444(h)(2), including the timely transmittal of a log to the PBC Commission on Ethics listing all Village vendors, lobbyists, principals and employers of lobbyists solicited, and donations pledged in excess of \$100 for this event. Lastly, on-duty staff or other municipal resources may not be used under this exception to solicit otherwise prohibited donations.

THE FACTS as we understand them are as follows:

You are the Village Attorney for the Village of Tequesta. The Village is involved in supporting a fundraising event to benefit the "Friends of Public Safety" (FOPS), which is recognized under IRS regulation 501(c)(3) as a tax-exempt non-profit organization, established by Village firefighters to support public safety personnel in times of need. The event will also help to support other select local charities as designated by FOPS.

A municipal employee, Fire Chief James Weinand, and a Village council member, James Humpage, serve on the board of FOPS and donations will be solicited from vendors of the municipality. You have advised that there is no "quid pro quo" or special privilege or benefit given to any business or person who contributes or to any official or employee who solicits, and that no vendor with an application pending before the Village will be solicited. The event will include raffles, door prizes and silent auctions. All money raised will be deposited into the non-profit's account; however 75 % of the funds raised will be redistributed to other local non-profits.

Once the event is planned, and the other charity recipients determined, the overall plan is presented to the Village Council to approve the event. Under similar circumstances, the Council has allowed on-duty Village staff to assist in organizing and conducting these events and may do so again.

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

**Sec. 2-443. Prohibited conduct.**

Public officials and employees may not use their official positions to give "a special financial benefit, not shared with similarly situated members of the general public" to a non-profit organization if the employee or official serves as an officer or director of that organization. Both Fire Chief James Weinand and Councilman James Humpage are officers and directors of FOPS and are prohibited from using their official positions or title to assist in this effort, including taking part in discussions related to the Village's sponsoring of this event. Councilman Humpage must abstain from voting and file a conflict disclosure form 8B with the Village Clerk and send a copy to the COE if this matter comes before the council.<sup>1</sup> Finally, no public official or employee may use his or her official position, property or resource which may be within their trust to "corruptly" benefit any person or entity. "Corruptly" means done with a wrongful intent, inconsistent with the proper performance of his or her public duties.

A potential conflict may arise regarding the donation of 75% of the fundraising proceeds to other non-profit organizations. The COE is unable to opine as to the specific ultimate distribution of funds as these facts are unknown, however, all prohibitions, requirements and limitations regarding § 2-443, prohibited conduct, also apply to these currently unknown non-profit beneficiaries. For example, any public official or employee who participates in the event and is a director or officer of an unrelated civic, religious or other non-profit organization may risk violation if they use their official position to assist FOPS in fundraising while they know, or should know, that their non-profit organization will ultimately specially financially benefit from the transaction.

**Sec. 2-444. Gift law.**

Section 2-444(g)(1)e. specifically exempts gifts solicited or accepted by municipal employees on behalf of the municipality "in performance of their official duties for use solely by the county or municipality for a public purpose." In an advisory opinion dated October 26, 2010, a similar issue was encountered. The COE opined that where donated funds were given directly to the county for use in erecting a shade awning at a county pool, county employee solicitation of donations from vendors was allowable even

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<sup>1</sup> Sec. 2-443(c) Disclosure of voting conflicts, see also, RQO 11-029

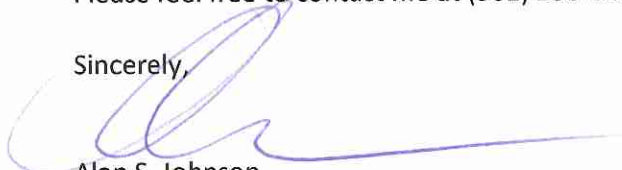
though the beneficiary of the awning was the non-profit Special Olympics.<sup>2</sup> In that case, the donation was made to the county, and it was the county, as compared to the non-profit beneficiary, who accepted and applied the funds. Here, it is FOPS who accepts and distributes the money raised. Therefore, Village resources, including on-duty staff, *cannot be used in solicitation of funds*, and all solicitations of donations from municipal vendors in excess of \$100 must comply with the non-profit solicitation reporting provisions within §2-444(h)(2).

IN SUMMARY, the Village may hold a fundraising event for the purpose of assisting local non-profit organizations, including organizations set up to assist Village employees. The Village may also assign staff members and allow the use of resources provided they are not connected with solicitation of donations from Village vendors, lobbyists, principals and employers of lobbyists.

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

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<sup>2</sup> RQO 10-027, also, see RQO 10-040(solicitation of vendor donations permitted for Fire-Rescue Department program)