



Palm Beach County Commission on Ethics

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July 25, 2011

Frank Babin, Risk Manager
City of Delray Beach
100 N.W. 1st avenue
Delray Beach, Florida 33444

Re: RQO 11-040
Gift Law

Dear Mr. Babin,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your emails of June 17, 2011 and July 22, whether you could accept meals of less than \$100 from a vendor of Delray Beach and whether the code distinguishes between a vendor that you have significant contact with in your official capacity as opposed to a vendor having no nexus with your position or authority.

IN SUM, you may not accept a gift of any value, including meals, from any person or entity as a kickback, bribe or "tip" for doing your job. You may not accept more than \$100 annually, in the aggregate from a vendor, lobbyist, or principal or employer of a lobbyist of Delray Beach. Gifts exceeding \$100 from vendors, lobbyists, principals and employers of lobbyists, who are not relatives, or are not otherwise exempted as gifts, are not reportable because they are absolutely prohibited.

THE FACTS as we understand them are as follows you are the Risk Manager for the City of Delray Beach (the City) and you will be attending the Annual Florida Risk and Insurance Management seminar (FRIM) in Naples, Florida August 2-6, 2011. You have been invited to dinner on August 3 and August 4 by two vendors of the city. These dinners are not a part of the conference and you did not solicit, nor did anyone on your behalf solicit these invitations to dinner. While you recommend vendors to the Delray Beach City Commission and city management, you do not have final decision-making authority. A Delray Beach City ordinance prohibits employees from accepting any gift that may influence their official action.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics, which took effect on June 1, 2011:

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

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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.

- (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 knows is an official or employee of that county or municipality. For the purposes of this subsection 2-444(a)(2), the term vendor also includes any person or entity that, because of the nature of their business, may respond to an invitation to bid, request for proposal or other procurement opportunity that has been published by the county or municipality.

First, whether or not an employee has final decision-making authority has no effect on the applicability of the restrictions of the gift law. If you are an employee of the City the gift law restrictions apply even if the vendor or lobbyist does not sell, lease or lobby your department. Second, you have stated that these dinner invitations do not involve a *quid pro quo*. That being said, you are not prohibited from accepting dinner from a vendor of the City, so long as the amount of the dinner does not exceed \$100 and over the course of the calendar year, you do not accept additional gifts from that vendor totaling, *in the aggregate*, more than \$100. You may never *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 your job.


The City may have procedures that are more restrictive than the county code of ethics or may contain different language than the county-wide ordinance. While the Commission on Ethics will enforce violations of the county code of ethics, responsibility for interpretation and enforcement of City policy or ordinance remains with the City.

IN SUMMARY, based on the information you provided you are not prohibited from attending dinners with vendors of your public employer on August 3 and 4, so long as you do not accept anything of any value in exchange for the past, present or future performance of your job. You may not accept more than \$100 dollars in the aggregate over the course of a calendar year from a vendor, lobbyist, principal or employer of a lobbyist. The code of ethics does not distinguish between vendors and departments within a governmental entity. This Commission cannot opine as to whether accepting gifts from vendors violates any City ordinance or departmental regulation. The Commission is concerned, however, that under the facts and circumstances you submit, there is an appearance of impropriety in accepting gifts of any value from vendors who you will potentially recommend to the City Commission and City management, regardless of the fact that you may not be the ultimate decision-maker.¹

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

¹ RQO 11-037 ("This is especially true if the official acts...are of a discretionary nature.")