



# Palm Beach County Commission on Ethics

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## **Executive Director**

Alan S. Johnson

July 25, 2011

Mr. Mike Shuey, Parks Supervisor  
City of Greenacres  
5800 Melaleuca Lane  
Greenacres, Florida 33463

Re: RQO 11-042  
Contractual Relationships/Misuse of Office

Dear Mr. Shuey,

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

YOU ASKED in your email dated June 22, 2011, whether your part-time employment and your spouse's full-time employment with Publix, a vendor of Greenacres, creates a prohibited conflict of interest under the code of ethics where your public employment requires you to purchase items on behalf of Greenacres and the items are purchased from Publix.

IN SUM, based on the facts you have submitted, you may not use your public position to give a special financial benefit to your outside employer or your spouse's outside employer. Therefore, you are prohibited from overseeing or participating in transactions between your outside employer or your wife's outside employer and Greenacres. Regarding part-time employment with Publix, unless the facts and circumstances of the transactions come within an exception to the section 2-443(d) *Contractual relationships*, you may not maintain both your public and private employment without violating this section of the code.

THE FACTS you submitted are as follows.

You are the parks Supervisor for the City of Greenacres (Greenacres) and work part-time at a Publix grocery store. Your wife works for Publix full time and staffs the customer service desk. In your official position as parks supervisor, from time to time you purchase supplies for city functions from Publix using Greenacres' city credit card. These transactions exceed \$500 per year. As a government entity, Greenacres does not pay tax on its purchases and as such, you make all Greenacres tax-exempt purchases from Publix at the customer service desk where your wife works.

COE staff has determined that there are several grocery stores within Greenacres, including Winn Dixie, Target and Walmart, as well as a number of pharmacies and convenience stores.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the 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:
- (4) 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;
- (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)

**Sec. 2-443(a)** prohibits you from using your official position with Greenacres in any way to give a special financial benefit to your outside employer or your spouse's outside employer, in this case Publix. A special financial benefit is anything of value that is not shared with similarly situated members of the general public. For example, a Publix receives a special financial benefit when you choose to purchase goods from Publix, as compared to another local grocery store, while you or your spouse work for Publix.

**Sec. 2-443(d)** prohibits you and your outside employer from entering into contracts or other transactions for goods or services with the municipality you serve. In your case, you work for both Publix and Greenacres. Maintaining Greenacres contracts or other transactions with Publix while you are employed by both would violate this section of the code. There are several exceptions to the contractual relationships provision of the code which might apply to your situation, including contracts or transactions totaling less than \$500 per calendar year, a sole source exception where the outside employer is the sole source of the goods or services within the municipality and a part-time employment waiver.

Over the course of the year, you purchase more than \$500 worth of supplies from Publix and there are several grocery stores within Greenacres' city limits, so neither the \$500 exception nor the sole source exception apply. Even if an exception did apply, you could not personally be involved in the transactions if they gave a special financial benefit to Publix, as previously discussed. While a part-time employment waiver is available in many cases, the waiver requirements include the following:

**Sec. 2-443(e) Exceptions and waiver.**

- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable, provided that:
- a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and



- b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable, and
- c. The employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
- d. The employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
- e. The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and
- f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists.

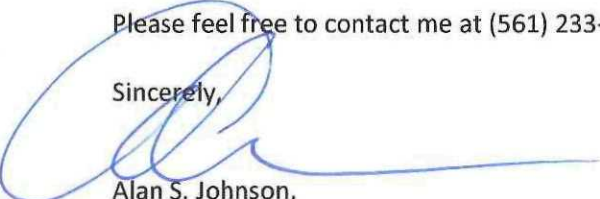
There is no indication, based on the facts and circumstances you have submitted that you have complied with subsections e. and f. above, and obtained either merit rule approval or a conflict of interest waiver from Greenacres. Nonetheless, based on the fact that you work at Publix, subsections a. and d. and possibly b. and c. would prevent your being able to obtain a waiver under this provision.

IN SUMMARY, based on the information you have provided, you may not use your official position to give your outside employer or your spouse's outside employer a special financial benefit. Furthermore, because you work part-time for Publix and you work in the Greenacres department that transacts business with Publix as well as the fact that you are involved in the transactions personally, you may not maintain both employments without violating the Contractual relationships section of the code. If your department eliminates transactions with your outside employer, while the violation may be cured, you will still need to comply with subsections e. and f. above and obtain the appropriate waiver from Greenacres.

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