



# Palm Beach County Commission on Ethics

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Alan S. Johnson

August 5, 2011

Mr. Edward Lowery, Director  
PBC Housing and Community Development  
100 Australian Ave., 5<sup>th</sup> Floor  
West Palm Beach, FL 33406

Re: RQO 11-043  
Conflict of Interest/Misuse of Office

Dear Mr. Lowery,

Your request for 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 memorandum of June 20, 2011 whether the Executive Director of a charitable organization, receiving federal funds administered through a county department, had a conflict of interest if he obtained a personal financial benefit through a rental property used by the applicant of the charitable funding. Additional information was obtained orally on July 18, 2011.

IN SUM, The Commission on Ethics (COE) does not have jurisdiction over employees, officers or directors of a charitable organization in regards to conflicts of interest. Both the Conflict of Interest and Misuse of Office sections of the Code of Ethics pertain to Public Officials and Employees only. While the COE cannot opine as to the facts and circumstances involving the Executive Director of a private charitable organization, we understand that there is a process whereby the transaction will be scrutinized under state and federal law.

THE FACTS as we understand them are as follows:

You are the Director of the Palm Beach County Housing and Community Development Department (HCD). HCD is a recipient of funding from the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) and the Emergency Shelter Grant (ESG) Programs. In March 2001, HCD published a Notice of Funding Availability (NOFA) inviting eligible participants to seek funding under the programs. As a result, Faith-Hope-Love-Charity, Inc. (FHLC), a 501(c)(3) charitable organization, submitted applications to the program.

FHCL, through its Stand Down House Program, provides housing and support services to homeless veterans who have been displaced due to post traumatic stress disorder, mental illness, substance abuse, and physical limitations. Stand Down House offers a multi-tiered program designed to relieve homelessness and hunger experienced by veterans who have been discharged from the VA Medical Center. FHCL requested CDBG funding for emergency housing and support services. It also requested

funding from the ESG Program for the operation and maintenance of the emergency shelter including cost of insurance, utilities, general maintenance and food. The agency has been operating for 16 years and has received CDBG funding for the Stand Down House facility for 4 years and ESG funding for 8 years.

The funding applications were determined to be eligible and considered for funding by the CDBG Selection Committee and ESG Advisory Board. Subsequent to the initial review of applications, it was discovered with the FHCL financial statements that the agency rents two of its residential homes used in its non-profit operations from the agency's Executive Director, Roy Foster.

The CDBG Selection Committee provisionally approved funding of \$22,400 for the salary of a Resident Technician and the ESGP Advisory Board recommended funding of \$25,000 for the operation and maintenance requests. Both funding recommendations were conditioned on the clarification of the potential conflict of interest.

Federal law addresses conflicts of interest and allows HUD to grant an exception to a conflict providing that it concludes that "the exception will serve to further the purpose of the Act and the effective and efficient administration of the recipient's program or project." As part of the HUD process in considering conflict waivers, HCD must provide documentation to HUD including an opinion of the recipient's attorney that the interest for which the exception is sought would not violate state or local law. The attorney for the grant recipient would be the County Attorney. The County Attorney's office opined that the recently adopted county ethics ordinances required the COE address the issue prior to the County Attorney.

THE LEGAL BASIS for this opinion rests in the jurisdiction conveyed to the Palm Beach County Commission on Ethics through the Commission on Ethics and Code of Ethics ordinances. Misuse of public office or employment, corrupt misuse of office, disclosure of voting conflicts and contractual relationships all apply solely to officials or employees. The definition of "official or employee" can be found in section 2-442:

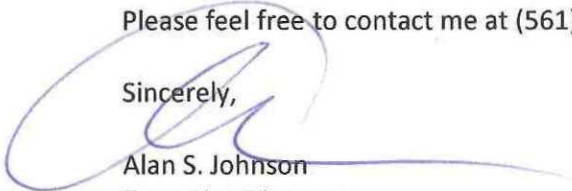
**Official or employee** means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function...The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi-judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

The Executive Director of FHCL is not an employee or official as defined by the Code of Ethics. While there are sections of the code that expand the COE jurisdiction to vendors (gift law, noninterference, contingency fees, honesty in applications, etc.) none of the sections include prohibited conduct involving potential conflicts of interest. Therefore, there is no provision for this body to opine as to the facts and circumstances underlying the issues regarding a non-profit employee, director or officer's potential economic conflict in a transaction with the county involving federal HUD funding.

IN SUMMARY, the COE cannot opine as to matters that involve individuals and transactions that do not come within its jurisdiction. Notwithstanding, since there are procedures in place under state and federal law, this issue needs to be addressed within those appropriate forums.

Please feel free to contact me at (561) 233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson  
Executive Director

ASJ/gal