



Palm Beach County Commission on Ethics

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July 15, 2011

Glenn O'Cleary
Palm Beach County Department of Airports
PBIA Communications Center
1000 Turnage Blvd.
West Palm Beach, FL 33406

Re: RQO 11-044
Prohibited conduct

Dear Mr. O'Cleary,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion. The opinion rendered is as follows.

YOU ASKED in your email dated June 27, 2011, whether it violates the Palm Beach County Code of Ethics for you and a co-worker to agree to switch work shifts, where you agree to provide additional financial compensation directly to the co-worker for working a scheduled midnight shift (11:00 p.m. to 7:00 a.m.) for you, while you work her regularly scheduled evening shift (3:00 p.m. to 11:00 p.m.). Additional information concerning this proposed shift swap was obtained in a telephone conversation with COE staff.

IN SUM, provided that you do not use your official position to influence your co-worker in a manner that is "inconsistent with the proper performance" of your public duties, there is no prohibition within the Code of Ethics for you and a co-worker to switch work shifts, even where you provide additional compensation to this co-worker. The COE cannot opine as to internal county government policy and procedure regarding such a shift change arrangement.

THE FACTS as we understand them are as follows:

You and your co-worker are employed at the Palm Beach International Airport (PBIA) by the Palm Beach County Department of Airports in the Airport Communications Center, which operates continuously 24 hours per day. As such, there are three employee work shifts at this center. Day shift (7:00 a.m. to 3:00 p.m.), evening shift (3:00 p.m. to 11:00 p.m.), and midnight shift (11:00 p.m. to 7:00 a.m.). You normally are scheduled to work during the day shift. Neither you nor your co-worker has any supervisory authority over each other.

Due to a temporary schedule change, you are slotted to work on the midnight shift for a month sometime in the near future. You consider this a hardship, and asked a co-worker who works the evening shift to change shifts with you for this period. Both of you agreed to swap shifts, and agreed

that you would provide additional financial compensation to the co-worker for agreeing to change shifts with you during this time period. You advise that swapping shifts to cover time off for family issues or vacation requests is common practice in your section. Further, your immediate supervisor has already agreed to allow the shift swap between you and your co-worker.

You asked for an advisory opinion in this case, because you were told by another co-worker that because additional financial compensation is to be paid, this arrangement may violate the Palm Beach County Code of Ethics.

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.

(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;

(b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties. (Emphasis added)

Under the facts as you presented, your agreement to change shifts with a co-worker is not based on obtaining a "special financial benefit" for you, since you are actually paying for the privilege of working a more desirable work shift. Insofar as your co-worker is concerned, although she will receive a financial benefit under this arrangement, under the facts and circumstances you submitted, the COE does not consider either employees actions as being a "use of official position" for the purpose of obtaining a special financial benefit as contemplated by the code. Therefore, §2-443(a)(1), *Misuse of public office or employment*, is not applicable to these circumstances.

However, since both you and your co-worker would receive a "benefit" or "exemption" under this arrangement, it is necessary to also review the language of §2-443(b), *Corrupt misuse of official position*. As listed above, a "corrupt misuse" under this section requires that the employee seek, "to corruptly obtain a special privilege, benefit or exemption for himself, herself, or others." This section goes on to define the term "corruptly" to mean, "done with wrongful intent and for the purpose of obtaining...any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties." (Emphasis added.)

While the swapping of shifts results in a benefit for you and your co-worker, neither action can be said to be done for a "corrupt" purpose, because arranging an appropriate schedule in which both work

shifts are adequately covered is not an action that would be considered to be "inconsistent with the proper performance of your public duties."

Furthermore, the fact that you both agree that the co-worker who switched her schedule to work the less desirable midnight shift deserves to be additionally compensated, tends to show that this additional payment is compensation for taking on an additional hardship, which is also not prohibited under the Code based on these facts and circumstances. Therefore, as long as the arrangement does not violate policy, an issue of which we cannot opine, it is not prohibited by the Code of Ethics.

Finally, since the financial benefit obtained by the co-worker is for the additional burden of working a less desirable shift, and is therefore compensation, §2-444, *Gift law*, and its prohibitions and/or reporting requirements are not applicable to this issue.

IN SUMMARY, under the specific facts you have submitted, the Palm Beach County Code of Ethics does not prohibit co-workers from switching work shifts, even where one receives additional financial compensation from the other.

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