



# Palm Beach County Commission on Ethics

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July 21, 2011

Darlene Kostrub, Chief Executive Officer  
Literacy Coalition of Palm Beach County  
551 SE 8<sup>th</sup> Street, Suite 505  
Delray Beach, FL 33483

Re: RQO 11-046  
Gift Law/Fundraising

Dear Ms. Kostrub,

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

YOU ASKED in your email dated June 30<sup>th</sup>, 2011, whether the Literacy Coalition of Palm Beach County could continue to host the Mayors' Literacy Luncheon, an annual event sponsored by the Coalition, Comcast Cable and the League of Cities, designed to inform city officials about literacy programs available to their citizens.

IN SUM, you are not prohibited from inviting mayors, municipal officials and staff to the Literacy Coalition's annual luncheon. For those municipalities where you are not a vendor, there is no prohibited limit as to the value of the luncheon. As a vendor to two municipalities, you must adhere to gift law limitations as do the attendees of the event. In those municipalities, the value of the luncheon tickets must not exceed \$100.

THE FACTS you submitted are as follows:

You are the Chief Executive Officer of the Literacy Coalition of Palm Beach County. The Literacy Coalition is a 501(c)3 non-profit organization dedicated to improving the quality of life in Palm Beach County through promoting and achieving literacy for all residents. For the past three years, the Literacy Coalition has held a Mayors' Literacy Luncheon at the Ritz Carlton in Manalapan, inviting the mayor of each municipality and encouraging them to bring two other city representatives to the event. The Literacy Coalition sponsors the luncheon in conjunction with the League of Cities and Comcast Cable and the meeting is designed to inform city officials about literacy programs available to their citizens and to their cities.

Based upon the information you provided, the Literacy Coalition does not employ lobbyists, but provides work place education classes to West Palm Beach and Boynton Beach, charging those municipalities program service fees of \$8,000 and \$5,000 respectively. The Mayors' Literacy Luncheon is not ticketed or open to the public; however, you anticipate the cost per person will not be more than \$50 dollars. In previous years, while several guests have elected to attend with their spouse, invitations are distributed by you to mayors and city officials only. You personally do not employ lobbyists or lobby in any other capacity.

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

**Section 2-442** defines Vendor as "any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction..."

The Literacy Coalition provides workplace education classes in West Palm Beach and Boynton Beach and charges a service fee annually to both municipalities. Under the code of ethics, the Coalition is considered a vendor of West Palm Beach and Boynton Beach.

**Sec. 2-444(a)(1)** of the gift law prohibits members of a local governing body or municipal employees, or any other person or business entity on his or her behalf, from soliciting or accepting a gift with a value of greater than \$100 in the aggregate for the calendar year from any vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to their municipality. This prohibition applies equally to you as a vendor. **Sec. 2-444(a)(2)** prohibits a vendor from giving, directly or indirectly, a gift of greater than \$100 in the aggregate per calendar year to a person who the vendor knows is a public official or employee where the vendor sells or leases to the municipality.

**Sec. 2-444(e)** prohibits any public official or employee from accepting a gift of any value in exchange for the past, present and future performance or non-performance of a legal duty or official public action. As long as the gift does not violate this section, elected officials and city staff are not prohibited from accepting up to \$100 dollars in the aggregate, over the course of the calendar year, from a vendor, lobbyist or principal or employer of a lobbyist.

While there are exceptions to the gift law limitations as they relate to "public events, appearances or ceremonies" which involve a "ticket, pass or admission" furnished by a nonprofit sponsor organization, your event is not open to the public as the tickets are distributed only to public officials and staff. Therefore, the gift law exception contained in **sec. 2-444(g)(1)i.** of the code is not applicable.

You are a vendor of West Palm Beach and Boynton Beach. Nevertheless, each official or staff member from Boynton Beach and West Palm Beach may accept up to \$100 in the aggregate over the course of the calendar year from the Literacy Coalition and remain in compliance with the code. Similarly, if Comcast, an event sponsor, is a vendor of any of the municipalities in attendance, the same gift limit would apply to any gift of tickets or admissions given by Comcast.

You indicated that in the past, spouses of municipal officials have attended. The acceptance of a ticket by the spouse of an official or employee in this context is considered a gift to the official or employee.<sup>1</sup> If given by a vendor, as long as the cost of two luncheons does not exceed \$100, the spouse may attend. If the cost exceeds \$100, the public official or employee may still attend, provided that the amount in excess of \$100 is paid back to the vendor within 90 days.<sup>2</sup> Within these parameters, so long as the official or employee does not accept anything of value because of an "official act taken" or "duty performed," which would result in a quid pro quo in exchange for attending the event, attendance and acceptance of lunch does not violate the gift law.

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<sup>1</sup> § 34-13.310(6)(a) Indirect gifts.

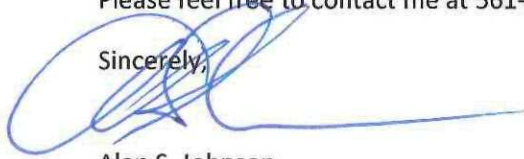
<sup>2</sup> § 112.3148(7)(b), Florida Statutes. Compensation provided by the donee to the donor, if provided within 90 days after receipt of the gift, shall be deducted from the value of the gift in determining the value of the gift.

IN SUMMARY, based on the information you have provided, you are not prohibited from holding the Mayor's Literacy Luncheon and inviting the mayors and two other city representatives from all 38 municipalities within Palm Beach County to attend the event so long as the requirements and limitations of the gift law are followed.

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 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson  
Executive Director

ASJ/mr/gal