



# Palm Beach County Commission on Ethics

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Alan S. Johnson

September 6, 2011

Mark C. Hall, Chief of Police  
Village of Palm Springs Police Department  
230 Cypress Lane  
Palm Springs, FL 33461

Re: RQO 11-047  
Gift Law

Dear Chief Hall,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on August 4, 2011.

YOU ASKED in your email dated June 30, 2011, about the implications of the Palm Beach County Code of Ethics under the *Gift law*, as it relates to various items you received while attending the Summer Conference for the Florida Police Chiefs Association (FPCA), held in Orlando, Florida June 26 through June 28, 2011. Additional information was obtained by COE staff in a meeting with you in your office on July 6, 2011, and several email exchanges.

IN SUM, how Section 2-444, *Gift law*, affects you regarding your attendance at the FPCA conference depends on the value and source of any gifts given to you or family members at the conference. Under §2-444, a "gift" refers to the transfer of anything of economic value, without adequate and lawful consideration. A gift received from non-vendors and non-lobbyists of the Village of Palm Springs (the Village), is not prohibited, however it must be reported if its value exceeds \$100. Gifts received by any vendor or lobbyist of the Village that exceed \$100, annually in the aggregate, are prohibited, but the prohibited portion of the gift (that portion over \$100) may be returned to the giver within 90 days of receipt without violating the code. Any benefit you received that was paid for by the Village due to your sanctioned attendance in your official capacity, is not considered a gift, and is neither prohibited nor reportable. Lastly, any award for professional or civic achievement given to you or the police department in your official capacity as Police Chief is specifically exempted from the gift law under Section 2-444(g)(1)(c).

THE FACTS as we understand them are as follows:

You are the Chief of Police for the Village of Palm Springs, Florida (the Village). In your official capacity as Chief, you attended the Summer Conference for the Florida Chief of Police Association (FCPA), held in Orlando Florida from June 26 through June 28, 2011. Attending this conference with you were your wife and two children. Your conference attendance fee and hotel room for the conference were paid for by the Village, however you paid an attendance fee personally for your wife and children to FPCA. The

hotel room cost was \$120 per day, pursuant to the rate given the FPCA by the hotel. You advise that the normal rate for this hotel is \$250 per day, but the hotel often discounts rates for guests attending a conference held at this location. You and your family arrived one day early and you paid the discounted hotel fee for this additional day. According to the facts as given, the hotel rate was negotiated by FPCA, and the decision of the hotel to extend that rate to your family the day before the conference was sufficiently related to your official travel to the conference, even though you were not reimbursed by the Village for that particular day. Therefore, it is not considered a "gift" pursuant to §2-443(g)(1)(h), and is neither reportable nor prohibited.

While at the Conference, you won a Blue Ray DVD Disk Player valued at \$120 as a raffle door prize. This item was donated to FPCA for this raffle by a car dealership in Brennan, Georgia. This dealership is not a vendor for the Village, although they are listed on the Florida State bid contract from which you purchase vehicles as one of the available vendors. This is a reportable gift under the Code, but is not prohibited, because the sponsor is not a vendor of Palm Springs, nor a lobbyist or principal or employer of a lobbyist that lobbies the Village.

As part of the FPCA conference program, you and your family attended a "NASCAR Night" at a local restaurant. The sponsor of this event was Motorola. Motorola is a vendor of Palm Beach County, from whom you purchase your police radio equipment, and thus is an indirect vendor of the Village. The cost to the sponsor for this event is estimated to be \$15,000. There were approximately 300 attendees, meaning that the individual cost for yourself, your wife and children is estimated to be \$200 (\$50 per person - four people attending). Section 2-444 prohibits the acceptance of a gift by you from a vendor of the Village if the value exceeds \$100. Here, the value is estimated to be \$200 for your family's attendance. You may reimburse Motorola for the amount in excess of \$100 to avoid a violation of the code of ethics.<sup>1</sup>

You and your wife attended a sponsored "hospitality suite" during the conference. FPCA estimated that the sponsor's cost was \$1,270 and the attendance was 300 people. The individual benefit to you and your wife based on 300 people in attendance is approximately \$8.50 (\$4.25 per person).<sup>2</sup> This gift is neither prohibited nor reportable based on its value, regardless of who sponsored this event.

Finally, at the awards banquet hosted by the FPCA, you were allowed to invite three (3) guests because your organization was scheduled to receive an award from FPCA for "Excellence in Policing." The award included a wall plaque and a check for \$1,000 payable to the police department. The food and drink for the three (3) guests was paid for as part of this award through the FPCA, who are not vendors, lobbyists, principals or employers of lobbyists for the Village. Your food and drink was paid for by the Village through the attendance fee, and you paid for your wife and children through the additional fee for the conference. The value of the banquet was estimated to be \$55.47 per guest by the FPCA Executive Director, Amy Mercer. Since you attended in your official capacity, the cost of your meal was not a gift. You paid for your wife and children to attend this function; therefore no gift related issues arise.

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<sup>1</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.

<sup>2</sup> § 112.3148(7)(j), Florida Statutes. The value of a gift provided to several individuals may be attributed on a pro rata basis among all of the individuals.

The "guests" you invited were paid for by FCPA. While these were guests of yours, a part of the award given to Palm Springs P.D. included FCPA's invitation to bring up to three (3) guests to attend the banquet, as well as a \$1,000 check to the agency for professional achievement. As such, both benefits are exempt from the gift law.

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

**Section 2-442** Defines lobbyist to mean "any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal..." and vendor as any person or entity who has a pending bid proposal, an offer or currently sells or leases property or goods or services to the municipality involved in the subject contract or transaction.

**Sec. 2-444 (a)(1)** prohibits a public official or employee from soliciting or accepting a gift of greater than \$100 in the aggregate for the calendar year from *"any person or 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."*

Sec. 2-444(f) requires any non-state reporting individual who receives a gift in excess of \$100 to report that gift on an annual gift reporting form. A gift is considered "the transfer of anything of economic value...without adequate and lawful consideration." However, an exception to the gift law can be found in sec. 2-444(g)(1)c. which specifically states that the definition of gift "shall not apply to: Awards for professional or civic achievement;"

It should be noted that under sec. 2-444(e) no public official or employee may accept a gift of any value in exchange for the past, present or future performance of a legal duty or other official public action.

IN SUMMARY, any "gift" received by you or any member of your family<sup>3</sup> while in attendance at this conference that is valued at greater than \$100, is either a reportable or prohibited gift under the PBC Code of Ethics. However, the code excludes certain gifts from the gift law requirements. A gift does not include attendance fees paid by the Village for your attendance at a conference in your official capacity, or any awards received for civic or professional achievement. Gifts valued at greater than \$100 (combined annually in the aggregate) from a vendor or a lobbyist, who lobbies, sells or leases to your municipality are prohibited, however the prohibited portion of the gift may be reimbursed within 90 days or receiving the gift.

While gifts from persons or entities who are not vendors or lobbyists within your municipality are not prohibited, a gift in excess of \$100 must be reported as required by the code. Finally, a person who accepts a gift they discover was prohibited by virtue of being from a vendor, lobbyist, principal or employer of a lobbyist of their public employer may avoid a violation of the code by returning to the donor the amount of the value that exceeds \$100. A gift of any value may not be accepted in exchange for the past, present or future performance of your official duties.

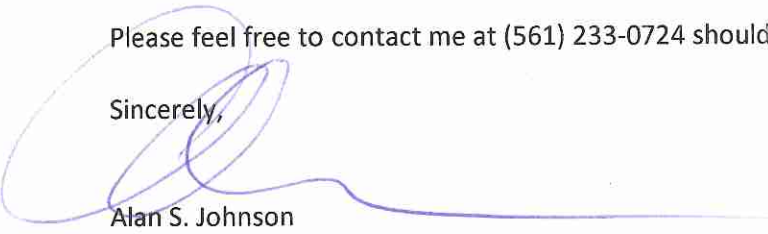
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<sup>3</sup> § 34-13.310(6)(a) Indirect gifts.

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/meb/gal