



# Palm Beach County Commission on Ethics

## Commissioners

Edward Rodgers, *Chair*  
Manuel Farach, *Vice Chair*  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

## Executive Director

Alan S. Johnson

September 6, 2011

Valencia Y. Stubbs, Esquire  
Office of the City Attorney  
City of Riviera Beach  
600 W. Blue Heron Blvd.  
Riviera Beach, FL 33404

Re: RQO 11-050  
Anti-Nepotism law

Dear Ms. Stubbs,

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

YOU ASKED in your email dated July 14, 2011, whether §2-443(c), of the Palm Beach County Code of Ethics, requires a sitting City of Riviera Beach Council Member to abstain from voting on the re-appointment of her son as a Trustee for the Firefighters' Pension Trust Fund, as established under §175.061, Florida Statutes. Additional information was obtained by staff via email on July 15, 2011.

IN SUM, under the facts you have presented, because the board position is voluntary and unpaid, it does not directly involve section 2-443(c), *Disclosure of voting conflicts*, as there is no special financial benefit gained by any of the persons or entities listed in 2-443(a)(1-7). In the case of a municipality with a population of greater than 35,000 people, the re-appointment to this position of a son by his parent who is a sitting City Council Member would violate section, §2-445, *Anti-Nepotism law*. However, §2-445 specifically allows such appointments by the council to a board that does not have land-planning or zoning responsibilities in those municipalities with less than 35,000 population. Since the Firefighters' Pension Trust Fund does not have land-planning or zoning responsibilities, and the population of Riviera Beach is less than 35,000, the appointment is not prohibited.

THE FACTS as we understand them are as follows:

You are an Assistant City Attorney for the City of Riviera Beach, Florida. In your official position, you have been asked whether a sitting Riviera Beach City Council Member may vote to re-appoint her son as a Trustee with the Firefighter's Pension Trust Fund, established in accordance with §175.061, Florida Statutes. Under this statute, a board of trustees for such a fund must have five (5) members, two (2) of whom are appointed by the governing body, which in this case is the Riviera Beach City Council. At present, one of these positions is filled by the son of a sitting City Council Member. The son will be under consideration for re-appointment as a Trustee in the future. When this occurs, the City Council will have a vote concerning the re-appointment of this position. Based on the 2010 Census data that

you provided, the City of Riviera Beach has a population of less than 35,000 people. In 2010, the population was 32,488.<sup>1</sup>

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

**Sec. 2-445. Anti-nepotism law.**

An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official. An individual may not be appointed...in or to a position in the county or a municipality if such appointment... has been advocated by an official...who is a relative or domestic partner of the individual or if such appointment...is made by a collegial body of which a relative of the individual is a member. *However, this section shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population.* (Emphasis added)

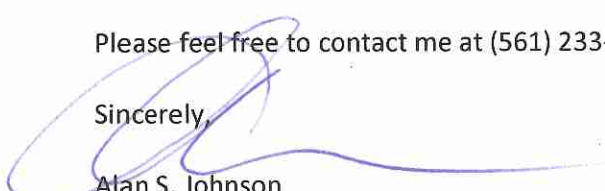
The Palm Beach County Code of Ethics mirrors state law in allowing an elected official to participate in the appointment of a relative to a position within the agency over which they exercise jurisdiction, when the population of a municipality is less than 35,000, so long as the appointment is not to a board with land-planning or zoning responsibilities.<sup>2</sup>

IN SUMMARY, under §2-445 of the Code of Ethics, it is not prohibited for a sitting city council member of a municipality with a population less than 35,000 to advocate or vote for the re-appointment of her son as a trustee to a board in the municipality over which the city council has appointment authority, so long as the appointment is not to a board with land-planning or zoning responsibilities. Furthermore, the Council member is not required to abstain from voting for such a re-appointment under these circumstances.

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

<sup>1</sup> U.S. Census Bureau website ([www.census.gov](http://www.census.gov))

<sup>2</sup> §112.3135, Florida Statutes (2010)