



Palm Beach County Commission on Ethics

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September 6, 2011

Mr. Bill Green, Councilman/Vice Mayor
Town of Juno Beach
410 Apollo Drive
Juno Beach, FL 33408

Re: RQO 11-051
Misuse of Office/Gift Law

Dear Councilman/Vice Mayor Greene,

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 September 1, 2011.

YOU ASKED in your letter dated July 13, 2011, whether as a "principal" of a Florida non-profit corporation, Juno Beach Sports, Inc., you are permitted to solicit donations and hold fundraising events for the non-profit while serving as Vice Mayor of the Town Council of the Town of Juno Beach. Additional information was provided by you orally and by e-mail on July 20, 2011.

IN SUM, as a public official, you may not use your official title as Vice Mayor to specially financially benefit a non-profit organization if you are an officer or director of the non-profit.¹ That would constitute a misuse of your public office. In addition, you may not vote or participate in any matter that will result in a financial benefit to you, your outside business or employer, or a non-profit organization of which you (or your spouse or domestic partner) are an officer or director.

With regard to gift law requirements, while you are not prohibited from soliciting donations for a non-profit organization in your untitled capacity, any solicitation, pledge or donation in excess of \$100 involving a vendor, lobbyist, principal or employer of a lobbyist of the Town of Juno Beach must be disclosed on a form provided by the Commission on Ethics for purposes of transparency. Solicitation, direct or indirect, is not prohibited under the code so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to you or the vendor/lobbyist being solicited. Lastly, you may not use municipal staff or resources in the solicitation of charitable contributions in excess of \$100 from Town vendors or lobbyists, regardless of your status as a director or officer.

¹ RQO 11-027 (firefighter/non-profit director not permitted to use municipal resources to solicit for charitable organization), RQO 11-029 (elected official/non-profit director may not use her official title to fundraise for the non-profit)

THE FACTS as we understand them are as follows:

You are a member of the Town Council for the Town of Juno Beach (the Town) and currently serve as Vice Mayor. You recently incorporated a non-profit corporation, Juno Beach Sports, Inc. (JBS). This entity is currently listed as a Florida non-profit corporation, however, your federal §501(c)(3) status is "pending." You are currently on the Board of Directors of JBS.

JBS intends to organize and develop a recurring beach volleyball event in conjunction with Extreme Volleyball Professionals (EVP), a brand owned by Sports Endeavors, Inc. (SE), an Illinois corporation. EVP organizes volleyball events across the country. The first such event is scheduled for November 12, 2011. JBS will solicit contributions, donating a portion of the proceeds raised by the event to the Loggerhead Marinelife Center, Inc. (LMC), a 501(c)(3) non-profit education and ocean conservation facility located in the Town. After EVP is paid their fee, and LMC receives a charitable donation, any remaining funds will be applied to payment of education/travel expenses incurred by JBS and "potentially even compensation for professional work and accomplishment, to be shared among the JBS Directors."

THE LEGAL BASIS for this opinion is found in both the misuse of office and gift law sections of the 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:

(1) Himself or herself;

(4) An outside employer or business of his or hers, or of his spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;

(7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

While you are in a position of authority as an officer or director of JBS, you may not use your official position to specially financially benefit that organization. Using your name and official title in fundraising would specially financially benefit JBS, to the exclusion of all other non-profit entities. Therefore, you may not solicit or otherwise act, or influence others to act in such a manner by using your official title. If you were to resign your position as director of JBS, subsection (7) would no longer apply, however, you indicated that you anticipated receiving a financial benefit from JBS from proceeds in the future. You must take great care not to use your official position as vice mayor to financially benefit yourself, or an outside business or employer in a way *not shared with similarly situated members of the general public*. Sec. 2-442 defines outside employer as "*any entity...of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation...*" An outside business is defined as "*any entity located in the county...in which the official or employee has an ownership interest.*" (Minimum 5%).

Section 2-443(c) *Disclosure of voting conflicts* similarly prohibits you from voting or participating in any matter that will result in a special financial benefit as set forth in the misuse of office section. Therefore, as a director of JBS, you are prohibited from participating or voting on any issue that benefits JBS, to the exclusion of other similarly

situated charities and non-profits. If you were not a director, subsection (7) would not apply as in the misuse of office analysis above, however, similarly to §2-443(a)(1) and (4), voting or participating in matters that will financially benefit you personally, or your outside business or employer, is prohibited.

In addition, should you be compensated by JBS in the future, it may then be considered your outside employer or business. You may not use your official position to obtain a special financial benefit for yourself or your outside business or employer.

Sec. 2-444 Gift Law

Aside from misuse of office and voting conflict issues, §2-244(c) prohibits an elected public official *"or any other person or business entity on his or her behalf"* from soliciting *"a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee."* If you or any relative or member of your household receives compensation from the donations to JBS that were solicited by you, or on your behalf, from vendors or lobbyists of the Town, such compensation may violate this section of the code.

Sec. 2-444(a) prohibits an elected official or employee of a municipality from soliciting or accepting *"...directly or indirectly, any gift with a value of greater than one hundred dollars (\$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 or a lobbyist who lobbies"* the official or employee's municipality. If you intend to solicit donations from vendors and lobbyists of the Town, or their principals or employers, there is an exception to the prohibition for a non-profit charitable organization, as defined under the Internal Revenue Code, if the solicitation is done in a manner consistent with the rules set forth in sec. 2-444(h) of the code of ethics. Keep in mind that as a director, these solicitations may not be made by you, or anyone on your behalf, in your official capacity or title as Vice Mayor of the Town.

Sec. 2-444(h) was added to the revised code of ethics to permit public officials and employees to transparently solicit contributions on behalf of non-profit charitable organizations. This section applies when the charitable organization solicits contributions in excess of \$100 from vendors or lobbyists of the official or employee's government entity. The rules allow these solicitations, provided that a detailed log is maintained of vendors and lobbyists solicited, pledges made and donations received. The charitable solicitation form is provided on the Commission on Ethics web site at <http://www.palmbeachcountyethics.com/pdf/Forms/Solicitation%20Log.pdf>. Keep in mind that a solicitation is permissible *"so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited."* In addition, as stated above, since you are a director of JBS, provided that it fits the definition of a non-profit charitable organization as defined under the IRS code, you may solicit, but only in your private capacity. As a director, neither you, nor anyone on your behalf, are allowed to use your official position/title in mailings, advertisements, or any other oral or written solicitation. Additionally, no person or entity that has a pending application for approval or award of any nature before the town may be solicited, and no municipal staff or resource may be used in the solicitation of these charitable contributions.

IN SUMMARY, the revised code of ethics does not prohibit an official or employee, *or any other person or business entity on his or her behalf*, from soliciting contributions, directly or indirectly, on behalf of a non-profit charitable organization as defined under the IRS code. This includes solicitation and acceptance of donations in excess of

\$100 from vendors and lobbyists of the Town, however, these solicitations may only be made if a solicitation log is maintained and filed with the COE for purposes of transparency and all other requirements of §2-444(h)(2) are followed.

Notwithstanding, as a director of JBS, you may not use your official position in any way to specially financially benefit JBS, including allowing the use of your official title in soliciting donations. You may not vote or participate in any matter that will result in a special financial benefit to you, or your outside business or employer. You must take great care in using your official position, if you contemplate receiving a financial benefit from JBS, as this may result in a violation of the misuse and conflicts sections of the code as well as the prohibition against soliciting for your own personal gain.

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/gal