



Palm Beach County Commission on Ethics

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September 6, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-053
Gift Law/Awards for Professional or Civic Achievement

Dear Mr. Elwell,

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 two (2) separate, but related questions in your letter dated July 12, 2011.

Your first question was whether awards given to employees for outstanding performance (such as Employee of the Year, Officer of the Month, etc.) are considered "gifts" for the purposes of the gift disclosure requirements under §2-444(f) of the Palm Beach County Code of Ethics, where these awards are sponsored by either the Town, or a private entity.

Your second question was, whether a non-profit organization (the Fortin Foundation of Florida) which is neither a Town vendor, or a lobbyist, principal or employer of a lobbyist that lobbies the Town of Palm Beach, may donate funds for two (2) employee recognition programs, where awards are given to employees based on time of employment with the Town, or at retirement from employment with the Town. COE staff obtained additional information via email.

IN SUM, awards for professional or civic achievement are specifically excluded from the definition of "gift" within the Code of Ethics. As such, they are not subject to the gift law prohibitions and annual reporting requirements, regardless of whether they are sponsored by the Town or by private entities. Notwithstanding this exclusion, the donation of funds for sponsorship of these awards by any person or entity may not be based on the receipt of any *quid pro quo* or other improper special benefit from the Town, or from any employee or official of the Town of Palm Beach.

THE FACTS as we understand them are as follows:

You are the Town Manager of the Town of Palm Beach (the Town). You advised in your letter requesting an advisory opinion, that the Town offers various awards to Town employees for outstanding performance. Among these awards are, Employee or Officer of the Year, and Employee or Officer of the Month. These awards may be sponsored and presented by the Town, or by private entities within the

Town. They are awarded for professional achievement by the employees in each case, and are used to recognize "outstanding performance" by an employee.

The Town also has two (2) employee recognition programs that provide awards to employees based on specific length of service to the town, or upon retirement from employment with the Town. These recognition programs are sponsored through financial donations by the Fortin Foundation of Florida (Fortin), a non-profit entity that is not a Town vendor, lobbyist, principal or employer of a lobbyist that lobbies the Town. Through donations to the Town from Fortin, employees who reach a specified time of service (in five (5) year increments) or are retiring from employment with the Town, are able to select a gift from a catalog in recognition of this achievement.

No specific value was listed for these awards, nor was the actual amount donated by the sponsors who fund these awards. However, that information is not necessary to answer your questions.

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

Section 2-443(b), *Corrupt misuse of official position*, prohibits any official or employee from using 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.

This Section of the Code would specifically prohibit an employee of the Town from accepting any benefit, directly or indirectly, including awards for professional or civic achievement, if these sponsorships were corruptly linked in any way to a *quid pro quo* arrangement. *Corruptly* includes an act or omission that is done with a wrongful intent which is inconsistent the proper performance of public duties.

Section 2-444(g) defines a gift as the transfer of anything of economic value. Under the gift law, a public official may not solicit or accept, and a vendor or lobbyist of the official's public entity may not give, directly or indirectly, a gift valued at greater than \$100. Permissible gifts in excess of \$100 may be subject to a reporting requirement. The facts that you submitted indicate that the private sponsorship for the two *length of service recognition programs* comes from non vendors/lobbyists. In this instance, even if considered gifts, they would not be prohibited under the code.

However, **Section 2-444(g)(1)(c)** excludes awards for professional or civic achievement from the definition of "gift" under the Gift law portion of the Code of Ethics. Therefore, as long as the benefit is truly an award for professional or civic achievement, and not a subterfuge to otherwise obtain a benefit for a wrongful purpose, the award is not considered a gift under the code.

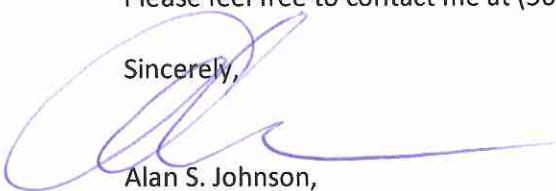
IN SUMMARY, based on the facts and circumstances you have submitted, Town employee awards for "outstanding performance," or recognition of their length of reputable service to the Town, are expressly excluded from the definition of "gifts" under Section 2-444(g)(1)(c) of the Gift Law portion of the Code of Ethics, and are exempt from all prohibitions and reporting requirements of the Gift Law. Nevertheless, Section 2-443(b) of the Code does prohibit the economic sponsorship of these awards by

private sponsors if such sponsorship is based on any *quid pro quo* arrangement, or the receipt of any special benefit resulting from an official act, inconsistent with the proper performance of the official's public duty.

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