

Palm Beach County Commission on Ethics

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October 7, 2011

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

Re: RQO 11-054
Gift Law

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 on October 6, 2011.

YOU ASKED in your letter dated July 12, 2011, whether Town of Palm Beach (the Town) employees, may accept discounted food from local establishments that may be Town vendors, where these benefits are provided due to the employees employment status with the Town, but where it is not given as a *quid pro quo* in exchange for any promised governmental action, and is a general discount available to all employees without exception.

IN SUM, Town employees are not prohibited from accepting discounted food at local restaurants, provided that the discount is not based on preferred official treatment of the vendor by the employee, the discount applies to all similarly situated government employees or officials, and it is not otherwise offered as a *quid pro quo* or to convey a special financial benefit in violation of the misuse of office sections of the code.

THE FACTS as we understand them are as follows:

You are the Town Manager of the Town of Palm Beach. Town employees are offered discounted food by local restaurants that may or may not be vendors of the Town. There is no indication that these discounts are provided as a *quid pro quo* in exchange for any official public action or the past, present or future performance of a legal duty.

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

Section 2-444(g) defines a gift as the transfer of anything of economic value. Discounted services are a thing of value and §2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, *"a 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 ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the ... county."* Several of these restaurants are vendors of the Town and would be subject to this prohibition should the discounts exceed \$100 during the year. However, the code excludes certain transfers of economic value from the definition of a gift. Section 2-444(g)(1)f. states as follows:

Exceptions. The provisions of subsection (g) shall not apply to:

- f. Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public;

Under the facts and circumstances of these transactions, all government employees receive the same discount regardless of whether the restaurant supplies goods or services to their public employer. Therefore all similarly situated persons within the general public, in this instance, Town employees, are treated alike. Previously, the COE has determined that non-vendors may offer discounted rates to public employees so long as there is not a quid pro quo or an exchange for the past, present or future performance or non performance of a legal duty or official action.¹ Regarding vendors, the COE determined that so long as discounts were not directed to a select individual or group of individuals singled out to receive a special discount not available to other similarly situated government employees, the general public discount exception may apply.² For example, should a vendor of the Town choose to offer a discount targeted to the employees who award or oversee their contract, such a discount would be prohibited under the code of ethics.

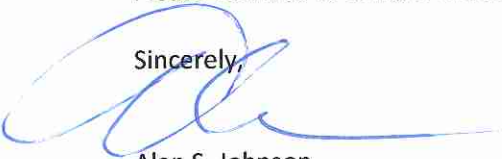
In addition, public employees and officials must keep in mind that §2-443(a) of the code prohibits any use of official position or office that will result in a special financial benefit, not shared with similarly situated members of the general public, for the public employee or official, as well as relatives, outside economic interests and non-profit organizations in which the public employee is in a leadership position. While accepting a discount under the facts submitted here is not prohibited under the provisions of the gift law, any such "use" of official position or office in obtaining a *special financial benefit* as defined in subsections (a), (b) and (c), would violate the misuse and conflict sections of the Code of Ethics.

IN SUMMARY, based on the facts you have submitted, public employee discounts are exempted from the gift law prohibitions applicable to vendors, provided; they are not based on the preferred treatment of the vendor by the *employee or official*, they apply to all other similarly situated government employees or officials, and they are not otherwise offered as a quid pro quo, or to convey a special financial benefit in violation of the misuse of office or voting conflicts sections of the Code of Ethics.

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/mr/gal

¹ RQO 11-002, RQO 11-007

² RQO 11-064 (Cell phone carrier discounts for public employees)