



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 11-055
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 September 1, 2011.

YOU ASKED in your letter dated June 30, 2011, whether it would violate the Palm Beach County Code of Ethics to allow gifts that have been donated to the Town of Palm Beach (the Town), to be distributed to individual employees of the Town, through the use of a "blind draw" raffle. Additional information was provided to COE staff via email.

IN SUM, you are not prohibited from distributing gifts to employees, where those items have been donated to the Town from persons or organizations that are not Town vendors, lobbyists, or principals, so long as there is no *quid pro quo* or other special consideration given to the donor, and the gift is not given for the past, present or future performance or non-performance of a legal duty or official action. If any item received by an employee is valued at more than \$100, it must be reported pursuant to the reporting requirements of the code.

However, a municipal official or employee may not accept, *directly or indirectly*, any gift with a value of greater than \$100 annually in the aggregate from any vendor, lobbyist or principal that lobbies, sells or leases to the municipality. In this case, a gift flowing through the Town Administration would still constitute an indirect gift. Gifts distributed in this manner with a value greater than \$100 in value would be prohibited if they came from a Town vendor, lobbyist or principal. In addition, the revised Code of Ethics prohibits a vendor, lobbyist or principal from giving such a gift to a person they know to be a public employee or official.

THE FACTS as we understand them are as follows:

You are the Town Manager for the Town of Palm Beach. Palm Beach has a policy against employees accepting gifts. On occasion, individuals or organizations will donate items of economic value, including such items as tickets to an event, admission fees to a charity golf tournament, or an offer of a particular free service from local business, to the Town. At times, these donations may be made by Town vendors,

and it is possible that on occasion these donations may come from people or organizations that are lobbyists, principals or employers of lobbyists who lobby the Town of Palm Beach.

The past practice of the Town of Palm Beach has been to distribute such donations to individual Town employees through a "blind draw" raffle. All Town employees are advised of the item that was donated, and if interested, they enter their name into the raffle. The names are placed into a container, and one is selected by chance to receive the item. If selected, and the gift is valued at more than \$100, the Town requires the employee to submit a "Town Acceptance of Favors and Gratuities Form," which documents their receipt of the gift item. You stated in your letter that, "through this process, we have ensured that no individual or organization could curry favor with any particular employee, that all employees (not just those in visible or influential positions) have an opportunity to enjoy the items that are donated, and that the receipt of valuable items is transparently documented."

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

Sec. 2-444. Gift law.

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept *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 of a lobbyist* who lobbies, sells or leases to the county or municipality as applicable. (Emphasis added)
- (a)(2) No lobbyist, vendor or principal or employer of a lobbyist that lobbies the county or a municipality shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (g) For the purposes of this section, "gift" shall refer to the transfer of *anything of economic value*, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, *without adequate and lawful consideration*. (Emphasis added)

IN SUMMARY, The Palm Beach County Code of Ethics does not prohibit a municipality from accepting and distributing gifts donated to the municipality by persons and entities who are not vendors or lobbyists of the municipality. Items distributed, with a value in excess of \$100 must be reported as required under the gift reporting provisions of the code.

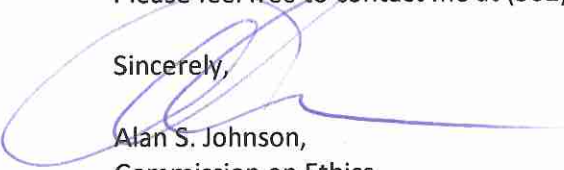
A Town employee may not accept, directly or indirectly, a prohibited gift of a value in excess of \$100 if that gift was originally given by a vendor, lobbyist, principal or employer of a lobbyist who lobbies, sells or leases to the Town. Likewise, a vendor, lobbyist or principal may not knowingly give a gift of a value greater than \$100 if they know the gift is for the benefit of a Town employee.

No gift may be given or accepted in exchange for the past, present or future performance of a legal duty or as a result of an official action.

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,
Commission on Ethics

ASJ/meb/gal