



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, Florida 33480

Re: RQO 11-056
Charitable Fundraising by Police and Fire Rescue Organizations

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 October 6, 2011.

YOU ASKED in your submission dated July 12, 2011 whether Palm Beach Police Department employees may accept emergency financial assistance grants from the Palm Beach Police Foundation.¹

In addition, you requested that if such grants were prohibited under the Code, whether these concerns would be alleviated by the Town of Palm Beach (the Town) administering the funds and overseeing the application process.

IN SUM, PBPD employees are not prohibited from accepting scholarship or emergency financial assistance grants from the Palm Beach Police Foundation (PBPF). However, since all PBPD employees are eligible to receive an educational or emergency grant should the need arise, solicitations for donations are considered solicitation for their own, as well as their fellow employees', financial benefit. While accepting grants is not prohibited, no PBPD employee, or any other person on his or her behalf, may solicit donations from a vendor or lobbyist of the Town where the funds are to be used for his or her personal benefit, the benefit of a relative or household member, or the benefit of any other PBPD employee or their relative or household member. By contrast, employees are not prohibited from soliciting funds from vendors or lobbyists of the Town provided the donations are solicited or accepted and specifically earmarked for use solely by the Town for a public purpose, such as the purchase of police equipment or funding of a PBPD program.

Additionally, public employee may not use their official position to obtain a financial benefit for themselves or their relatives that is not available to similarly situated members of the general public. Solicitation for personal benefit while in uniform, or otherwise in an official capacity, is prohibited.

¹ This request contained separate issues requiring individual advisory opinions. Additional related opinions will reference RQO 11-057. Specifically, this is a companion opinion to RQO 11-081 (PBPF scholarship grants)

Lastly, employees must take great care not to use their position to take, fail to take or influence others to take or fail to take any action in exchange for permissible donations. As the grants for employees will always be in excess of \$100, they must be reported in accordance with the procedures outlined in the Code of Ethics.

THE FACTS as we understand them are as follows,

The Palm Beach Police Foundation (PBPF) accepts donations and gifts from the public. It manages funds in excess of 1.4 million dollars and makes grants to the Town of Palm Beach for training, equipment and other operational needs of the Palm Beach Police Department. In addition, the PBPF provides funding for the Palm Beach Crime Watch program and to the employees of the Palm Beach Police Department (PBPD) for educational scholarships that are the subject of RQO 11-081. When employees of the PBPD have suffered some personal hardship, such as a fire at their home or an uninsured medical need for themselves or their family, the PBPF has made emergency financial assistance grants to these employees. Since the foundation was established in 2006, these grants have rarely been given and according to PBPF President John F. Scarpa, are "decided on a case by case basis, and [are] reviewed and approved by the full board of directors." Payment is made directly from the Foundation to the employee, with no knowledge or involvement of the Town. No employee of PBPD serves as an officer or director of the PBPF, but many officers are actively involved in fundraising for the organization including attending the Annual Policemen's Ball.

The Town requires all employees, pursuant to Section 7-14.3 of the Town Employee Personnel Manual, to report anything of value received in excess of \$100 from any individual, business or organization located in or doing business in the Town for any reason, including hardship or educational assistance for dependants. Employees are required to submit the Town's "Acceptance of Favors and Gratuities Disclosure Notice" within 7 calendar days of receiving the item of value.

THE LEGAL BASIS for the commission's opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Sec. 2-443(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;
- (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

No employee or official may use their official position or employment to obtain a special financial benefit for themselves² or their spouse, domestic partner, household member or relative. In its current state, fundraising performed by PBPD employees on behalf of the PBPF creates an emergency fund for their own

² RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

financial benefit. Accordingly, lending one's name and official title to fundraise for the PBPF would constitute using their position to specially financially benefit themselves, resulting in a violation of the misuse of office section of the code.³ Similarly, employees would be in violation of §2-444(c) even if they were to solicit in their private capacity, whether directly, indirectly or by another person on their behalf, if the solicitation is from a vendor or lobbyist of the Town.

Section 2-444(c) states as follows:

No... employee, or any other person or business entity on his or her behalf, shall knowingly solicit 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. (emphasis added)

While the Code of Ethics ordinarily would allow a public employee to solicit or accept donations on behalf of a charitable organization provided the vendor and lobbyist donations in excess of \$100 are recorded and filed with the COE⁴, the code prohibits such solicitation from vendors or lobbyists if the gift will benefit *any* Town public employee, their relatives or household members.⁵ Accordingly, solicitation of non-vendors or lobbyists is prohibited. That being said, Town employees may solicit donations for a public purpose, as provided by §2-444(g)(1)e, so long as those donations are specifically solicited and resulting funds are earmarked for the operational needs of the PBPD.

Section 2-444(e) states as follows:

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;*
- (2) A legal duty performed or to be performed or which could be performed; or*
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.*

No employee may take, fail to take or influence others to take or fail to take, any official action because of the hardship funds provided by the Foundations or donations made by individual donors known to a public employee.

Section 2-444(g) defines a gift as *"the transfer of anything of economic value"* and §2-444(f)(2)b requires employees to complete an annual gift disclosure report, logging any gift in excess of \$100 unless one of several exceptions apply. Since the circumstances dictate that the amount of the emergency financial assistance grants will always exceed \$100, employees who receive such assistance must report these gifts on their annual gift reporting form.

THE RATIONALE for limiting the solicitation of donations by employees and officials from lobbyists and vendors of their public employer is grounded in the desire to avoid such solicitation for personal benefit. In addition, general reporting requirements and other limitations serve to increase transparency and remove the appearance that donations are made to obtain access or engender good will of those employees or officials. The Commission on Ethics is empowered to issue an advisory opinion to *establish the standard of public duty, if any*, regarding the facts of the situation submitted.⁶ Accordingly, Commission on Ethics Rules of Procedure provide that *"If deemed appropriate by the COE, additional comment regarding ethics,*

³ RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form of financial benefit from a non-profit organization they may not use their official title to specially financially benefit that charity)

⁴ §2-444(h)(2)

⁵ §2-444(c)

⁶ Revised Commission on Ethics Ordinance, §2-260.9

appearance of impropriety or similar advice to the requesting party based upon the factual scenario as presented" may be given.⁷ The Commission on Ethics normally would not opine as to whether, in order to prevent the appearance of impropriety, you as Town Manager should place additional restrictions on acceptance of these scholarship or emergency funds.

However, while not prohibited under the Code of Ethics, programs such as these may create an appearance of impropriety where large donations are given and where such a direct financial benefit is received. This is especially true if official acts of PBPD and PBFR are of a discretionary nature. Officers and Department personnel must take great care to not take an official action, or perform, fail to perform or violate a legal duty because of a gift that was solicited or accepted by them or on their behalf as prohibited by sec. 2-444(e). For example, a Town police officer may not take an action during a traffic stop based upon his or her knowledge of the status of the driver as a PBPF donor.

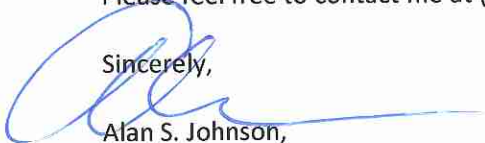
In your advisory opinion request, you asked whether these potential conflicts, including solicitation prohibitions, might be remedied by the PBPF being adopted and administered as a Town function. We concur with your assessment that should the Town find this program to be for a public purpose and if the Town were to accept the donations on behalf of its employees and distribute these donations accordingly, the transparency and accountability concerns surrounding the current program would be mitigated. Donations would thereby be solicited or accepted on behalf of the public entity for use solely by the Town for a public purpose, i.e., the benefit of Town employees.⁸ As with existing donations from the PBPF for training and equipment, the donations would not be considered gifts under the code and the gift law would therefore not apply.

IN SUMMARY, based on the information that you have provided, Town employees may not solicit donations on behalf of the PBPF from vendors or lobbyists of the Town of Palm Beach. Nor may they solicit or accept any donation as a quid pro quo or other exchange for the past, present or future performance of an official act or a legal duty. Emergency financial assistance and scholarship grants must be reported on an employee's annual gift reporting form. Should the Town take over administration of the grants, the above prohibitions and reporting requirements would not apply; donations solicited or accepted by the Town for a public purpose are not gifts for purposes of the code of ethics. Similarly, funds currently solicited by employees and directly earmarked solely for Town use are not considered gifts as defined under the code. Notwithstanding, an employee may not use his or her official position, or offer any quid pro quo or other benefit in exchange for donations, in violation of the financial misuse or corrupt misuse provisions 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

⁷ COE Rules of Procedure 2.8(f)

⁸ §2-444(g)(1)e