



Palm Beach County Commission on Ethics

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July 25, 2011

Tammy K. Fields, Esquire
Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, Florida 33401

Re: RQO 11-058
Contractual Relationships/Misuse of Office

Dear Ms. Fields,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your submission dated July 13, 2011, whether an income-eligible County employee may receive a purchase assistance mortgage or rehabilitation mortgage from the Palm Beach County Housing and Community Development Department, a program that is funded by the United States Department of Housing and Urban Development (HUD).

IN SUM, based on the facts you have submitted, County employees may not use their public position to give themselves a special financial benefit; a benefit not shared with similarly situated members of the community. Similarly, County employees may not enter into contracts for goods or services with the County unless the facts and circumstances of the transactions come within an exception to section 2-443(d) *Contractual relationships*. In this case, County employees are receiving and contracting for the same benefit as eligible members of the general public, an exception to section 2-442(d). Accordingly, a County employee is not prohibited from obtaining a Palm Beach County funded HUD loan where they are approved for the loan on the same terms as any other Palm Beach County resident.

THE FACTS you submitted are as follows:

You are a Senior Assistant County Attorney for Palm Beach County. Palm Beach County reviews and administers United States Department of Housing and Urban Development (HUD) low-income housing and rehabilitation loans and in certain instances, Palm Beach County employees may be income-eligible to receive assistance. HUD requires, pursuant to 24 CFR 570.611(c), that an exemption request be made to HUD for any County employee. As part of that request, the County must state that the assistance is not a conflict of interest under any local law.

In this particular situation, the County employee requesting funding under the Federal Neighborhood Stabilization Program works for the county's Head Start program and does not oversee administer or supervise the contract in any way. County employees are made aware of this program in the same manner as any other member of the public. All applicants must go through an extensive application process and meet federal income requirements.

THE LEGAL BASIS for this 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;

Sec. 2-443(d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. *This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public.* (emphasis added)

Sec. 2-443(a) prohibits employees from using their official position with the County, in any way, to give themselves a special financial benefit. Here, because the HUD program is advertised to employees in the same manner as it is advertised to the general public, and employees must be income-eligible in the same way as any other member of the public, they are similarly situated and there is no special financial benefit. Furthermore, this particular employee does not oversee or administer the Palm Beach County Housing assistance program.

Sec. 2-443(d) prohibits employees from entering into contracts with the government entity they serve, unless one of several exceptions applies. Much like the misuse of office section discussed above, in this case, a county employee is entering into a contract for services with Palm Beach County, but the Palm Beach County Housing Program was made available to him on the same terms available to all members of the public. This section specifically excludes transactions with the public entity *on the same terms available to all members of the public.*

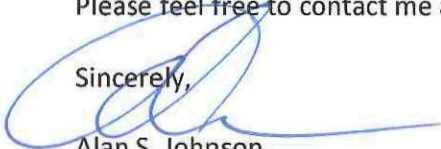
IN SUMMARY, based on the information you have provided, a county employee is not prohibited from entering into a transaction with the county where the goods obtained are available equally and under

the same terms to all members of the general public, provided that the public employee does not use his official position in a manner that will result in a special financial benefit to himself, not shared with similarly situated members of the general public. Likewise, so long as county employees are eligible for the federal housing loan program on the same terms available to all members of the public, and no influence is used by the public employee, the county is not prohibited from facilitating a HUD mortgage under the Palm Beach County 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