



Palm Beach County Commission on Ethics

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August 5, 2011

Mark C. Hall, Chief of Police
Palm Springs Police Department
230 Cypress Lane
Palm Springs, FL 33461

Re: RQO 11-059
Prohibited conduct, Gift law, Solicitations for Non-Profit Charitable Organizations

Dear Chief Hall,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on August 4, 2011.

YOU ASKED in your email dated July 19, 2011, whether it violates §2-444(h)(1-3) *Solicitation of Contributions on Behalf of a Non-profit Charitable Organization* of the Palm Beach County Code of Ethics, for employees of the Village of Palm Springs to participate in the American Cancer Society's Breast Awareness Fund Raiser, slated to be held on October 22, 2011. Additional information was also provided by email to COE Staff.

IN SUM, the PBC Code of Ethics does not prohibit the participation of Village employees in a charitable event such as the American Cancer Society Breast Cancer Fundraiser, *so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited.* However, no person or entity with a current application for approval or award may be solicited. Any solicitation of vendors, lobbyists, principals or employers of lobbyists who lobby the Village that are in excess of \$100 must be disclosed on a solicitation log and submitted to the ethics commission within 30 days of the charitable event. In addition, the code prohibits the use of on-duty municipal staff or municipal resources to be used in the solicitation of these charitable contributions. If an official or employee is a director or board member of the non-profit charitable organization, he or she is prohibited under §2-443(a) *Misuse of public office or employment*, from using their official position to give any special financial benefit to the charity.

THE FACTS as we understand them are as follows:

You are the Chief of Police for the Village of Palm Springs Police Department (PSPD). Under your direction, members of the PSPD formed a committee to explore ways to increase team-building skills and general morale within the Department. The committee decided to participate in the American Cancer Society's Annual Breast Awareness Fundraiser, and suggested this opportunity be offered to all Village employees. This event is entitled *Making Strides Against Breast Cancer*, and is held in various locations throughout the nation, including Palm Beach County, to raise funds for breast cancer research and treatment. You conducted a survey within the department to judge other employee interest. During this time, you were advised that participation by Village employees in this event may be prohibited by the Code.

To your knowledge, none of the Palm Springs officials or employees is an officer or director of a local, state or national chapter of American Cancer Society, the sponsoring charitable organization.

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

Sec. 2-443. Prohibited conduct.

(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:* (Emphasis added)

(7) A civic group, union, social, *charitable*, or religious organization, or other not for profit organization *of which he or she (or his or her spouse or domestic partner) is an officer or director.* (Emphasis added)

(b) *Corrupt misuse of official position.* An official or employee shall not use 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.....* "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. (Emphasis added)

Other than the misuse of office provisions involving public employees or officials who are officers or directors of charitable organizations and the prohibition against "corrupt misuse of official position", the Code of Ethics has no direct prohibition against the use of on-duty Village staff for preparation, organization or assisting with a charitable event. It should be noted, however, that the code section permitting solicitation of contributions specifically prohibits the use of staff or other Village resources for solicitation of charitable contributions from vendors, lobbyists, principals or employers of lobbyists, by officials or employees on behalf of a non-profit organization.

Sec. 2-444. Gift law.

(h) Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization.

(1) Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, *is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited.* The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable. (Emphasis added)

(1) To promote the full and complete transparency of *any such solicitation, officials and employees shall disclose, on a form provided by the Commission on Ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known.* The form shall be completed legibly and shall be filed with the Commission on Ethics. The form shall be filed within 30 days from the occurrence of the event for which the solicitation was made, or if no event, within 30 days from the occurrence of the solicitation. (Emphasis added)

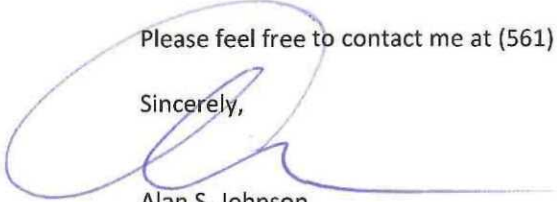
(3) Officials and employees *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions* described in this subsection. (Emphasis added)

IN SUMMARY, employees of the Village may participate in the annual American Cancer Society's *Making Strides Against Breast Cancer* fundraiser, but may not solicit contributions for this event from vendors, lobbyists, principals or employers of lobbyists, while on-duty, or by the use of any municipal resource. This exception to the \$100 gift limit from vendors and lobbyists applies so long as there is no *quid pro quo* or other special consideration, including any special financial benefit to the employee or the person or entity being solicited. A solicitation log must be maintained and submitted to the ethics commission within 30 days of the fundraising event.¹ No solicitation greater than \$100 is permitted if made to a person or entity with a pending application for approval or award of any nature is before the Village. Further, employees or officials of the Village may not use their official position to give a special financial benefit to any non-profit organization if they (or their spouse) are officers or directors of the non-profit², and no employee may use their official position to corruptly secure any benefit for this organization, or for any person or entity.

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

¹ Pending COE approval, RQO 11-039 (public employees and officials who solicit for non-profit organizations must comply with the disclosure requirements of § 2-444(h)(2)).

² Pending COE approval, RQO 11-029, RQO 11-051 (municipal official may not use his or her official position, office or title to solicit charitable contributions if he or she is an officer or director of the non-profit organization)