



Palm Beach County Commission on Ethics

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September 6, 2011

Bob Sugarman, Esquire
Sugarman & Susskind
100 Miracle Mile, Suite 300
Coral Gables, FL 33134

Re: RQO 11-060
Gift Law/Travel Expenses

Dear Mr. Sugarman,

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 submission dated July 18, 2011 whether Trustees of the City of Boca Raton Police and Firefighters' Retirement System (BRPFRS) are subject to the jurisdiction of the Palm Beach County Commission on Ethics and Code of Ethics. To the extent that trustees are subject to the code, what are their duties and responsibilities regarding BRPFRS related seminars and conferences?

IN SUM, while the BRPFRS is not an "advisory board" as defined under the Code of Ethics, trustees appointed by the Boca Raton City Council are considered "officials." Five of the 8 BRPFRS Trustees are employees of Boca Raton. Their decisions impact the city budget and they are paid a city salary while engaged in BRPFRS activities during working hours. Therefore, the Commission on Ethics finds there to be sufficient nexus between a trustee's public employment and the BRPFRS to place them, as public employees, within the jurisdiction of the sections of the Code of Ethics dealing specifically with financial and corrupt misuse of office issues.

For trustees who are either "officials" (appointed by the Boca Raton City Council) or public employees (elected by fellow employees), code sections involving acceptance of travel expenses apply only where the travel expenses or gifts involve vendors, contractors, bidders, proposers, service providers who do business with the City of Boca Raton. Likewise, the \$100 gift limitation involving the solicitation or acceptance of gifts only applies to vendors or lobbyists who lobby, sell or lease to the City. These regulations do not extend to those doing business exclusively with the BRPFRS, which is not a board created by the City. However, any non-prohibited gift accepted by a City of Boca Raton employee or official in excess of \$100 is reportable pursuant to the annual reporting requirements of the Code of Ethics. Lastly, no gift of any value may be accepted by a trustee who is a public official or public employee in exchange for the performance or non-performance of an official act or legal duty.

THE FACTS as we understand them are as follows:

The City of Boca Raton Police and Firefighters' Retirement System (BRPFRS) was established by Chapter 12, Article IV of the Boca Raton Code and Chapters 175 and 185 of the Florida statutes, to provide retirement benefits to the police officers and firefighters employed by and retired from the City of Boca Raton (the City). Eight trustees serve the BRPFRS; four are city residents appointed by the city council and four are city employees (two police officers and two firefighters) who are elected by their co-workers. Currently, five of the trustees are city employees. Section 112.661(4), Florida Statutes, requires trustees of public pension funds to complete continuing education requirements. It is the policy of the BRPFRS to pay any registration fee and travel expenses incurred in association with these conferences. City employees are paid by the City for time spent on BRPFRS matters during regular working hours.

Opal Financial Group ("Opal") is a private business that coordinates institutional investment conferences throughout North America and Europe. These events are designed for High-Net-Worth Individuals and executives in Corporate Pension Funds, Endowments, Public Funds, Family Offices, Foundations, Taft-Hartley Funds, Financial Planning Firms, 401 (k) Plans, Investment Consultancies, Hedge Funds, Investment Banks, Brokerage Firms, Law Firms and Accounting Firms. There is no fee to attend the public fund conferences for any pension board member nationwide. An Opal representative confirmed that conference sponsors and potential service providers cover the cost of the conference so that Public Pension Board Trustees may attend free of charge. Opal itself does not have contracts with or provide goods or services to the City of Boca Raton; however, sponsors of Opal events or other similar conferences may be vendors of the city.

A city-council appointed trustee, who is not an employee, volunteers to serve as chair of several of the conferences Opal presents. As chair, he or she presides over the conference and reviews the conference program. While not directly compensated for the role as chairman, Opal reimburses or pays travel expenses to attend the conference.

Effective July 1, 2011, local government sponsors of defined benefit pension plans, in this case, the City, may not reduce contributions required to fund the normal cost of the plan. Senate Bill 1128, which made a series of changes to Florida's local government defined benefit retirement plans, requires that the employer is responsible for funding the "normal cost" even if plan investment losses require that the employer contribute a greater percentage per employee.

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

Section 2-442 defines *Advisory board* to mean "any advisory or quasi-judicial board created by the board of county commissioners, by local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies." While the BRPFRS is governed by local ordinance, the board is authorized by state statute. It is not "created by" the local municipal governing body and is, therefore, not an advisory board.

Section 2-442 defines "officials" as "... members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of (a) local municipal governing body, as applicable, to serve on any advisory quasi-judicial, or any other board of the county, state or any other regional, local, municipal, or corporate entity." City appointees are therefore officials and are subject to the Code of Ethics in as much as they represent the interests of the legislative body that appointed them, the City Council of Boca Raton. However,

employee trustees, elected by employees and not appointed by the City Council, are not subject to the Code of Ethics as officials.

Employee members of the board are subject to the requirements of the code of ethics as employees of the City. While the BRPFRS is a separate and semi-autonomous entity from the city, should the plan be underfunded, the city is partially responsible for remedying the deficit under the requirements of Senate Bill 1128. In addition, time spent on BRPFRS matters during normal business hours is compensated by the City. The fiscal responsibility incurred by the trustee's public employer coupled with the payment of City salary for BRPFRS matters provides a sufficient nexus between the public employment and outside trust activity to incur limited jurisdiction over the BRPFRS Trustees who are also employees of the City.

Section 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:
- (1) Himself or herself;
 - (2) A member of his or her household, including a domestic partner and his or her dependents, 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;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;
 - (5) A customer or client of the official or employee;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner-- "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (7) A nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

Trustees appointed by the Boca Raton City Council are considered "officials" and may not take, fail to take or influence others to take or fail to take any action that would result in a special financial benefit to any of the above persons or entities. Likewise, under §2-443(c) these officials may not vote on any matter that would result in a special financial benefit to those same individuals and other entities.

As for those Boca Raton employees who are not "officials" as defined by the code (those trustees elected by their co-workers), they too may not use their official position to obtain a special financial benefit for those persons and entities listed above, that are not shared with similarly situated members of the general public. In this instance, employee-trustees are eligible to sit on the board as a result of their employee status and decisions they make as trustees have a financial effect on their public employer.

Section 2-443(d) prohibits officials and employees from entering into contracts with the City of Boca Raton, unless one of several exceptions applies. Trustees are not prohibited, by the Code of Ethics, from

entering into contracts to provide goods or services to the BRPFERS by the code. The COE cannot opine as to any other rules, regulations or state statutes that may limit such a contract.

Section 2-443(f) Accepting travel expenses.

No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees, and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners of local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

Trustees of the BRPFERS (officials and employees) cannot accept travel expenses from a “contractor, vendor, service provider, bidder or proposer” of the City without obtaining a waiver from the City Council. There is no similar prohibition involving contractors, vendors, etc. of the BRPFERS who are not also doing business with the City. Trustees must keep in mind that complimentary registration at educational conferences is funded by sponsorship dollars and the situation presented by the trustee who chairs the conference is no different. Should a vendor of the City also be a sponsor of one of these educational conferences, reimbursement of travel expenses would be considered an indirect payment of those expenses by the City vendor. In that case, trustees must apply for a waiver from the City Council in order to attend the conference.

Section 2-444. Gift Law

Section 2-444(g) defines a gift as the transfer of anything of economic value, including hospitality, food and drink. Section 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 ... municipality.” Section 2-442 defines a vendor as a person or entity who sells or leases goods or real or personal property to the City or a person or entity with a pending bid proposal or an offer to sell or lease goods or real or personal property. There is no such prohibition for “officials” who are not members of an advisory board or elected members of the county or a municipal body. Since the BRPFERS is not an “advisory board” as defined under the code, this prohibition only extends to vendors or lobbyists who lobby, sell or lease to the City. Likewise, the prohibition against soliciting anything of value from a vendor or lobbyist does not apply to vendors or lobbyists of BRPFERS. Lastly, permissible gifts of a value in excess of \$100 must be reported pursuant to §2-444(f) of the code.

Notwithstanding that the prohibitions of §2-443(a) may not apply to vendors and lobbyists of BRPFERS, City employees and officials are still subject to §2-444(e) in the performance of an official act or legal duty related to their status as a City employee or official. 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.

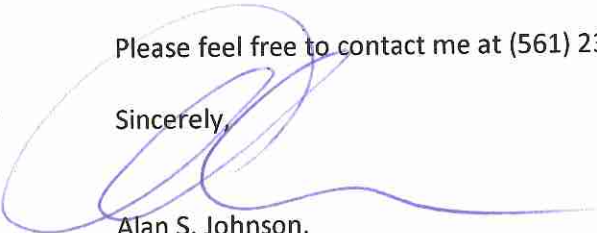
Based on the facts you have submitted, there may be vendors of the BRPFRS who are present at the conference that are not vendors of the City. Keeping in mind the misuse of office section discussed above, and the prohibition against accepting anything of value as a quid pro quo for the performance of your job, trustees are not prohibited from accepting gifts of any value from non-vendors, lobbyists, principals or employers of lobbyists who do not lobby, sell or lease to the City, but must report the gift should its value exceed \$100. Continuing education travel expenses provided by vendors of the City, properly waived under §2-443(f), or travel expenses paid by the pension plan, are exempted under §2-444(g)(1)h., from the reporting requirements of the gift law so long as attendance is related to an official or employee's duties and responsibilities as a BRPFRS Trustee.

IN SUMMARY, employees and officials of the City of Boca Raton are required to comply with the Palm Beach County Code of Ethics. Although the BRPFRS is not an *advisory board* under the code, trustees appointed by the City Council are considered *officials*. Employees/trustees who are elected by other employees still maintain their status as City employees and must comply with the Code of Ethics when acting in an official capacity for the City. Limitations and prohibitions relating to the solicitation or acceptance of gifts only apply to vendors, lobbyists, principals and employers of lobbyists who lobby, lease or sell to the City, however, no gift may be accepted in exchange for the past, present or future performance of their official duties as employees or officials of the City. Travel reimbursement from vendors of the City may be accepted provided the trustee obtains a waiver from the City Council. Any gifts, not otherwise prohibited, in excess of \$100 must be reported on an annual gift report. Travel reimbursement associated with educational or governmental conferences or seminars, properly waived if required, does not need to be reported.

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