



# Palm Beach County Commission on Ethics

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September 20, 2011

Mr. Thomas Hernacki  
717 Buttonwood Road  
North Palm Beach, FL 33408

Re: RQO 11-062  
Voting Conflicts

Dear Mr. Hernacki,

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 capacity as a City Councilman for the Village of North Palm Beach, whether a conflict of interest exists if you were to participate and vote to change an ordinance increasing the allowable size of a boat or RV parked on a single family residential property if you own a racing shell that may be covered under the ordinance.

IN SUM, as an elected official you may not use your official position to give yourself a special financial benefit not shared with *similarly situated members of the general public*. Voting on an ordinance change that would allow you to store your racing shell on your property would give you a fair market value benefit regarding the potential need for rental space and thereby constitute a misuse of office. The facts submitted do not otherwise indicate that there are a sufficient number of similarly situated individuals to negate the application of the special financial benefit prohibitions within the Code of Ethics. Therefore, you must continue to *publicly disclose the nature of the conflict*, file the required state disclosure form, refrain from voting and not participate in, or influence the process, if this issue comes before the Village Council.

THE FACTS as we understand them are as follows:

You are a Councilman for the Village of North Palm Beach (the Village). The Village has an ordinance restricting residents from parking boats and recreational vehicles (RVs) in excess of thirty feet long by ten feet high on single-family residential property. You own a 1983 Vespoli racing shell that is over 32' long, but it is not 10' high. You contend that the racing shell is not covered by the ordinance, however, the COE cannot opine as to your responsibility under municipal law. For purposes of this opinion only, the COE will consider the racing shell as subject to the ordinance restrictions. Therefore, the code restrictions would affect your ability to store the shell on your property.

This matter was scheduled for discussion before the Village Council on July 28<sup>th</sup>. At that time you abstained from voting or participating in the matter and you filed an 8b conflict of interest form. You have not brought this matter before the council in regards to your personal property, nor have you received a notice of violation. In addition, you are aware of numerous other individuals with boats and RVs currently in violation of the Village ordinance.

You have various locations where you can store your racing shell without incurring additional cost, including your office, as well as rack space available to you free of charge at the Palm Beach Rowing Association's boathouse on Lake Mangonia, among others.

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

Section 2-443(a) prohibits you from using your official position to give yourself "*a special financial benefit, not shared with similarly situated members of the general public.*" Similarly, §2-443(c) prohibits you from voting or participating on an issue that would result in a *special financial benefit* obtained by you or one of the other persons or entities outlined by the code. All residents of the Village are subject to the ordinance. Owners of RVs and boats as well as non-owners are affected by such regulations and would therefore be considered similarly situated under these facts and circumstances. While you have indicated that there may be numerous resident owners of RVs and boats within the Village who are in a similar situation, you are not aware of the number, nor is there any indication that affected owners would constitute a majority or even a significant minority of Village residents.<sup>1</sup> Notwithstanding the fact that you currently have free storage space available at other locations, the COE finds that having to remove your boat from your home location, in combination with the potential travel costs and market value of rental space in the future, presents a sufficient basis for a finding an economic value in storing the racing shell at your home. As a result, by voting on this issue, you would be using your official position to give yourself a special financial benefit of maintaining that storage site at your home.

Accordingly, should this matter come before the Village Council in the future, you must 1) disclose the nature of your conflict before the Council discusses the issue; 2) abstain from voting, discussing or otherwise participating in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the Village Clerk and the Palm Beach County COE. The language of §2-443(c) is as follows:

*County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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...*

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<sup>1</sup> RQO 10-013 (Airport Advisory Board members are similarly situated to users of the airport where a decision only affects users and not the general public)

IN SUMMARY, based on the facts and circumstances presented, you are prohibited from voting or participating in the discussion surrounding a change to the current Village boat and RV storage ordinance. The COE recognizes and commends the fact that you have already complied with the Code of Ethics requirements prior to submitting this request for opinion and agrees with your prior assessment that abstention and non-participation is required.

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