



Palm Beach County Commission on Ethics

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September 6, 2011

Mr. Steve Bordelon, Director, Information Systems Services
Palm Beach County Board of County Commissioners
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 11-064
Gift law/ Public employee discount

Dear Mr. Bordelon,

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 September 1, 2011.

YOU ASKED in your e-mail of August 9, 2011, whether Palm Beach County employees may accept discounted mobile phone packages provided by AT&T, Verizon, Sprint and T-mobile that are offered to all government employees. AT&T, Verizon and Sprint are vendors of Palm Beach County. The COE discussed the issue at a public meeting on August 4, 2011.

IN SUM, based upon the facts you have submitted, Palm Beach County employees are not prohibited from accepting cellular phone discounts, provided that the discount is not based on preferred treatment of the vendor by the employee, the discount applies to all similarly situated government employees or officials, and it is not otherwise offered as a quid pro quo or convey a special financial benefit in violation of the misuse of office and voting conflict sections of the code.

THE FACTS as we understand them are as follows

You are the Director of the Information System Services Department for Palm Beach County and receive a personal cellular phone discount. Your discount is available to all public employees, without restriction. Three of the major wireless carriers, AT&T, Verizon and Sprint, provide general public employee discounts and are vendors of Palm Beach County.

Commission staff contacted the major wireless service providers about their government discount programs. AT&T, Verizon, Sprint and T-mobile all offer Government employee discount plans that are open to any federal, state, county or municipal employee. They require that the employee show proof of employment through a government email address, paystub or employer ID. These discount programs are available to all government employees and are not associated with the services these vendors provide to the county. Nor are they tied to the county's contract with the provider. Discounts typically range from 15-20% of the basic service amount billed and may include discounts on phone or wireless accessories such as car chargers or cell phone cases. While each wireless provider determines the percentage of the discount that they chose to offer to employees, all government employees regardless of their department, job responsibility or status as a county, municipal, state-level, or federal

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employee receive the same discount. Over the course of a calendar year, standard discounts may exceed, in the aggregate, \$100 in value.

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

Section 2-444(g) defines a gift as "*the transfer of anything of economic value.*" Discounted services are unquestionably a thing of value and §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 ... county." AT&T, Verizon and Sprint are vendors of the county and are subject to this prohibition.¹ However, the code excludes certain transfers of economic value from the definition of a gift. Section 2-444(g)(1)f. states as follows:

Exceptions. The provisions of subsection (g) shall not apply to:

- f. Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public;

Under the facts and circumstances of these transactions, all employees, whether they work for Palm Beach County, a municipality, the State of Florida or the federal government receive the same discount regardless of whether the wireless provider supplies goods or services to their public employer. Therefore all similarly situated persons within the general public are treated alike. Previously, the COE has determined that non vendors may offer discounted rates to public employees so long as there is not a quid pro quo or an exchange for the past, present or future performance or non performance of a legal duty or official action² The question presently before the commission is whether public employees are permitted to accept such discounts from vendors of their public employer. Where there is no evidence that these are targeted discounts, the Commission on Ethics interprets the code to exempt broad based public employee discounts from the gift law prohibition applicable to vendors. The State Commission on Ethics made a similar finding in relation to otherwise prohibited lobbyist gifts/discounts as long as they were not *directed to a select group of reporting individuals* or a particular reporting individual who was *singled out to receive a special discount that was not available to anyone else.*³ For example, should a vendor of the county or a municipality choose to offer a discount targeted to the employees who award or oversee their contract, such a discount would be prohibited under the code of ethics.

In addition, public employees and officials must keep in mind that §2-443(a) of the code prohibits any use of official position or office that will result in a special financial benefit, not shared with similarly situated members of the general public, for the public employee or official, as well as relatives, outside economic interests and non-profit organizations in which the public employee is in a leadership position. While accepting a discount under the facts submitted here is not prohibited under the provisions of the gift law, any such "use" of official position or office in obtaining a *special financial benefit* as defined in subsections (a), (b) and (c), would violate the misuse and conflict sections of the Code of Ethics.

IN SUMMARY, based on the facts you have submitted, broad based public employee discounts are exempted from the gift law prohibitions applicable to vendors, provided; they are not based on the preferred treatment of the vendor by the employee or official, they apply to all other similarly situated government employees or officials, and they are not otherwise offered as a quid pro quo, or to convey a special financial benefit in violation of the misuse of office or voting conflicts sections of the Code of Ethics.

¹ Conversely, §2-444(a)(2) prohibits a vendor from giving a prohibited gift to someone they know is a county or municipal employee.


² RQO 11-002, RQO 11-007

³ CEO 06-18 (October 25, 2006)

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