



Palm Beach County Commission on Ethics

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Alan S. Johnson

August 12, 2011

Chief Steven B. Jerauld
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411

Re: RQO 11-065
Charitable Solicitation

Dear Chief Jerauld,

Your request for an expedited advisory opinion pursuant to Commission on Ethics rule of procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your e-mail of August 9, 2011, whether Palm Beach County and Municipal Fire Rescue personnel may participate, while on-duty, in the annual Muscular Dystrophy Association (MDA) 2011 "Fill the Boot Drive" without violating the Code of Ethics.

IN SUM, the Code of Ethics does not prohibit on-duty fire rescue personnel from participating in the MDA non-profit fund raising event sanctioned by their government entity, provided that any solicitation or acceptance of donations in excess of \$100 from a person they know, or should know with the exercise of reasonable care, is a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies their government employer, be done only while off duty and comply with the charitable solicitation log requirements of the code.

THE FACTS as we understand them are as follows:

You are the Chief of Palm Beach County Fire Rescue and submitted this request on behalf of Palm Beach County Fire Rescue (PBCFR) and the Professional Firefighters and Paramedics of Palm Beach County, International Association of Firefighters Local 2928 (IAF Local). Annually, Fire Rescue personnel from the county and municipal departments join 300 other communities statewide to participate in an annual fundraising event for the benefit of the Muscular Dystrophy Association (MDA), a non-profit charitable organization. Known as the "Fill the Boot Drive", on duty fire rescue personnel volunteer to stand at traffic intersections within their response zones so that motorists can donate to MDA by placing currency and spare change into fire rescue boots. According to past experience, donations are generally limited to "loose change from an ashtray, or single dollar bills." Larger donations are received, however, "anything larger than \$20 would be very unusual." Donations are generally made anonymously by motorists waiting at traffic lights. This is a statewide fundraising effort and personnel are permitted to fundraise while on duty by their public employers. Participating firefighters carry portable radios and

emergency vehicles are parked nearby in order to assure on duty paramedics and firefighters are available for emergency calls, as they would be at their posted station houses.

In 2010, the boot drive in Palm Beach County yielded donations totaling \$92,000. That amount was the single largest source of funding for the MDA in the state. The 2011 drive is scheduled for September 2-4, 2011 and culminates with the MDA Labor Day Telethon. You have requested an expedited response from the COE.¹

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics, which took effect on June 1, 2011:

Section 2-443(a), misuse of office, prohibits a public official or employee from specially financially benefiting a non-profit organization *of which he or she (or his or her spouse or domestic partner) is an officer or director*. Therefore, any paramedic or firefighter who is an officer or director of MDA, locally or nationally, may not use his or her position to financially benefit the organization, *in a manner which he or she knows or should know will result in a special financial benefit, not shared with similarly situated members of the general public*, which in this instance would be all other similarly situated charitable organizations. An employee or official in this position may not solicit donations while on duty, or otherwise use their official position to specially benefit MDA.²

Under the gift law provisions, §2-444(a) prohibits a public employee from soliciting or accepting more than \$100 from a vendor or lobbyist in most circumstances. The revised Code of Ethics provides an exception to this prohibition to allow participation by officials and employees in charitable fundraising.³ However, this exception does require that fundraisers maintain a log of all solicitations and donations in excess of \$100 from vendors or lobbyists doing business or lobbying their public employer. Furthermore, in soliciting donations from these persons or entities, a public employee *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions*.⁴

Therefore, Firefighters or paramedics who are not otherwise restricted as officers or directors of the charity, must comply with gift law regulations involving gifts from *any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable*.⁵ Specifically, a public employee must take great care to not accept donations in excess of

¹ Rule of Procedure 2.6 Expedited Responses. When the requesting party so indicates, and the facts support an expedited review of a request for advisory opinion, the Executive Director will confer with the COE Chairperson or Co-Chairperson to determine whether; to set the matter for review at the next scheduled meeting; to set a special meeting of the COE to review the request; or to have the Executive Director respond prior to the next regular meeting.

² RQO 11-029

³ §2-444(h), PBC Code of Ethics

⁴ §2-444(h)(3), PBC Code of Ethics

⁵ §2-444(a)(1), PBC Code of Ethics

\$100 from a person or entity who they know or should know lobbies, sells or leases to their public employer, without keeping a log of the transaction or while being on-duty at the time.⁶

The facts and circumstances you submitted indicate that the vast majority of solicitations and donations involve anonymous motorists contributing small cash amounts while waiting at intersections. The rules regulating gifts from vendors or lobbyists specifically require that the donor status is known or should be known to the recipient. The prohibition against use of staff or resources and the requirement of a log only applies to knowingly soliciting or accepting donations in excess of \$100 from these prohibited sources. In a practical sense, this is unlikely to happen in a fundraising event such as the MDA Boot Drive where donations are generally anonymous, spontaneous and given in small amounts, however, participants need to be aware of the requirements. If a fundraising participant is offered a donation in excess of \$100 from a donor who they recognize as a lobbyist or vendor of their county or municipal public employer, that particular gift would need to be logged (submitted within 30 days) and could not be accepted while on duty.⁷

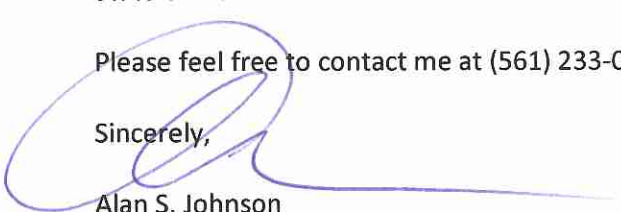
While the risk assessment associated with a broad based public fundraiser such as the Boot Drive may be low, and a gift in excess of \$100 by a motorist on a street corner may be exceedingly rare, nevertheless, if such a large donation were to be made by an unknown donor, it is the opinion of the COE that the firefighter ask and record the donor's name. After the event a determination can be made regarding whether or not disclosure is necessary.

IN SUM, firefighters and paramedics are not prohibited from participating in the annual MDA Boot Drive provided that any solicitation or donation in excess of \$100 from a person or entity that the employee or official knows, or should know, is a vendor, lobbyist, or principal of a lobbyist who lobbies, sells or leases to their county or municipal public employer, complies with the regulations contained in §2-444(h) of the 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/gal

⁶ RQO 11-059 (participation in American Cancer Society Breast Cancer Fundraiser by on duty municipal personnel not prohibited so long as the requirements of §2-444(h) are followed)

⁷ In the event that a vendor or lobbyist donates anonymously and subsequently identifies the donation, that individual would be in violation of the code or ethics under §2-444(a)(2) which prohibits a vendor, lobbyist or principal from giving a prohibited gift to an individual they know is an official or employee of the government in which they transact business.