



# Palm Beach County Commission on Ethics

**Commissioners**

Edward Rodgers, *Chair*  
Manuel Farach, *Vice Chair*  
Robin N. Fiore  
Ronald E. Harbison  
Bruce E. Reinhart

**Executive Director**

Alan S. Johnson

September 9, 2011

Martin DeLoach, Fire Chief/Vice President  
Fire Chief's Association of Palm Beach County  
247 Edwards Lane  
Palm Beach Shores, FL 33404

Re: RQO 11-066  
Extra Duty Details/ Part-Time Employment Waiver

Dear Chief DeLoach,

The Commission on Ethics considered your request for an advisory opinion and rendered its opinion at a public meeting held on September 1, 2011.

YOU ASKED in your letter of June 8, 2011 whether the uniformed extra duty detail outside employment provisions of the Code of Ethics applied equally to Law Enforcement and Fire Rescue Agencies. Additional information was obtained during a discussion of the issue at the August 4, 2011 COE meeting as well as a follow-up letter received by COE staff on August 22, 2011.

IN SUM, uniformed fire rescue extra duty details that are contracted or administered by the applicable municipal public safety agency provide the same service in the same manner as do police agency details. The intent of §2-443(e)(5)g. is to provide for a waiver of the outside employment provisions for uniformed extra duty or overtime details where the public agency maintains transparent records and administers or maintains the contracts. Although the code refers to law enforcement, to exclude fire rescue details performing the same function under these circumstances would result in a "manifest incongruity." Therefore, for purposes of the exception and waiver provisions, both law enforcement and fire rescue uniformed details are exempted from the prohibitions enumerated in subsection (d), contractual relationships.

THE FACTS as we understand them are as follows:

You are the Palm Beach Shores Fire Chief and Vice-President of the Fire Chief's Association of Palm Beach County. Both county and municipal fire rescue departments contract or administer uniformed extra duty details involving certified fire rescue personnel participating in special events in their official capacity. As with police assignments, they are regulated by union contracts that require a systematic procedure for the selection of personnel. You stated that, "on an almost daily basis, our departments provide EMS and fire rescue coverage utilizing off-duty personnel in a similar fashion, often working side-by-side with our law enforcement partners." The details involve multiple contracts for venues and

events throughout the county. In many instances, staffing for the uniformed extra duty details is determined near the time of the event. The volume is significant and the administrative difficulties of executing waivers for each and every event and individual fire rescue employee mirror the circumstances faced by law enforcement agencies. County and municipal fire departments already maintain transparent records regarding extra duty detail contracts and administration in the same manner as do police agencies. You have spoken with League of Cities and union representatives who join in the request to interpret the current extra duty detail waiver exemption to encompass all public safety personnel.

THE LEGAL BASIS for exempting all similarly situated public safety personnel from the requirements of filing individual part-time employment waivers, permitting contractual relationships otherwise prohibited by the code, may be found in §2-444(e)(5)g., it's legislative intent, and Florida Appellate Court interpretation of administrative law construction.

Section 2-444(d) prohibits an *employee from entering into any contract or other transaction for goods or services with their respective county or municipality*. This prohibition includes transactions between the employee's government employer and his or her outside employer or business. The code provides a number of exceptions to this prohibition, including a part-time employment waiver, to be executed by the employee and approved by the chief administrative officer and the employee's department head. The executed waiver is submitted to the COE and is published and maintained for transparency purposes. A Drafting Committee, established by referendum, revised the Code of Ethics in 2011. Among the revisions was an exception to the waiver requirement for uniformed law enforcement personnel, as follows;

**Section 2-444(e)(5)g. Official law enforcement overtime or extra duty details.** The provisions of subsection (d) shall be waived for outside employment when that employment consists of a certified police agency uniformed external security detail, contracted or administered by the police agency as applicable. For the purpose of this subsection, all records of external, extra duty or overtime security details, including supervisor approval, identity of contracting parties, and including time, date and manner of detail shall be maintained by the individual contracting police agency, records of which shall be accessible to the public subject to state public records disclosure exemptions.

On August 4, 2011, this matter was generally discussed by the Commission on Ethics at its regularly scheduled meeting. During the public comment section of the discussion, the COE heard from both municipal and county fire chiefs as well as members of the Referendum Drafting Committee and the League of Cities. The Fire Chiefs maintained that all public safety uniformed extra duty details, including fire rescue details, are similarly contracted and administered. Members of the committee who drafted the exemption agreed that the omission of fire rescue personnel was an inadvertent oversight and that had the issue been raised, the section would have included all public safety department uniformed details similarly situated and administered. Florida Supreme Court and Appellate Court decisions have addressed statutory construction and interpretation issues. Where public policy is not violated, broad discretion is permitted in an administrative body interpreting the legislative intent of a provision. "In

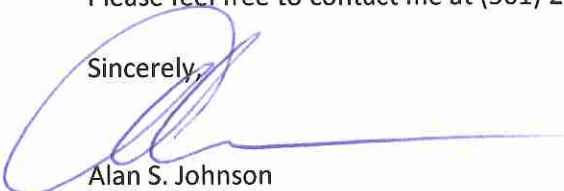
statutory construction a literal interpretation need not be given the language used when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.”<sup>1</sup>

IN SUM, based on the facts you have submitted, §2-444(e)(5)g. applies to all public safety uniformed extra duty details contracted or administered by the county or municipality, as applicable, provided all code requirements for administration, record retention and maintenance are followed.

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

---

<sup>1</sup> *Las Olas Tower Company v. City of Ft. Lauderdale*, 742 So.2d 308 (4<sup>th</sup> DCA 1999)(A reviewing court will defer to an interpretation given a statute or ordinance by the agency responsible for its administration.) *Rotemi Realty, Inc. v. Act Realty Company, Inc.*, 911 So.2d 1181 (Fla. 2001)(Interpreting state statute which bars lobbyist contingency agreements to not include real estate agents)