



Palm Beach County Commission on Ethics

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September 19, 2011

Diana Grub Frieser, City Attorney
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 11-069
Gift Law/Tickets

Dear Ms. Grub Frieser,

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 submission dated August 15, 2011 whether city employees and officials may accept tickets provided by the city to events held at the Mizner Park Amphitheater and if so, are they reportable gifts.

IN SUM, City employees and officials are not prohibited from accepting tickets to attend non-profit or for-profit events at the Mizner Park Amphitheater. Promoters or event companies who lease space from the City are not vendors as defined by the Palm Beach County Code of Ethics. However, if the value of event tickets exceeds \$100, they are reportable gifts.

THE FACTS as we understand them are as follows;

The City of Boca Raton (the City) operates the Mizner Park Amphitheater (MPA) pursuant to an interlocal agreement between the Boca Raton Community Redevelopment Agency (BRCRA) and the City. The City plans and oversees city events at the MPA, but also leases the space for use by non-profit and for-profit entities. All entities leasing space from the City complete a Facilities Use Agreement, detailing access and use rights for each event. The MPA has two seating options, moveable chairs in the floor section and 18 open air balconies on either wing of the complex. Moveable chairs are placed in each balcony and depending upon the event may be sold by the promoter as individual ticketed seats or at a box or unit price for the entire seating area. As a part of the lease agreement, the City retains at least two balconies for employees and officials. While the City provides the tickets to these events, the value conveyed is not a part of an employee or official's benefit package or employment contract.

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(a) of the gift law prohibits employees and officials from accepting more than \$100 dollars in the aggregate from a vendor of the municipality they serve over the course of a calendar year. A vendor is defined in §2-442 as follows.

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality Involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager, or employee.

While non-profit and for-profit entities lease event space at the MPA *from* the City, they do not lease or sell goods or services *to* the city.¹ Accordingly, they are not vendors and §2-443(a)(1) does not apply to this situation.

Section 2-444(g) defines a gift as *"the transfer of anything of economic value"* and §2-444(f) requires employees and officials to complete an annual gift disclosure report, reporting any gift in excess of \$100 unless one of several exceptions apply. There is no exception for tickets provided to employees and officials simply because they are from a governmental entity unless they are a contemplated part of the employee or official's overall compensation package.

The fact that the City operates MPA and leases space to promoters is relevant under the facts presented. By retaining balconies pursuant to a lease agreement, those balconies would not be considered as a part of the leased facility. Therefore, the gift of concert seats would not be gifts from the promoter who has no control over the retained balconies. There would be a value added to the seats based on the value of the ticketed concert price for similar seating, however, the gift would be from the City. This value is calculated pursuant to the Florida state standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code.

The City provided two scenarios first, where promoters market each balcony as a unit or skybox style seating and second, where the promoter sells individual balcony seats at a ticketed "market-driven price." The Code of Ethics follows the standards outlined in §112.3148(c), Florida Statutes. When there is no individual ticket price to value an event, the value is determined by dividing the total cost for hosting the event by the number of persons attending the event.² Should the promoter sell balcony units as a whole, then the City would simply need to contact the promoter or the vending entity selling tickets (e.g., Ticketmaster), determine the balcony price and divide that price by the number of seats in the balcony to value the per person cost.³ In the second scenario where ticketed balcony seats are sold individually, according to §112.3148(h), Florida Statutes, these tickets are valued by the face value of a similar ticket. If the value of the ticket exceeds \$100 it is a reportable gift pursuant to §2-444(f).

¹ §2-444 PBC Code of Ethics, RQO 11-022 (airline-tenants of Palm Beach International Airport are not vendors of the county; they lease gate-space *from* the County, they do not sell or lease goods or services to the County).

² Florida Administrative Code 34-13.500 Gift Valuation Example: The value of a gift provided to several individuals may be attributed on a pro rat basis among all of the individuals. If the gift is food, beverage, entertainment or similar times, provided at a function for more than 10 people, the value of the gift to each individual shall be the total value of the items provided divided by the number of persons invited to the function.


³ See also, RQO 11-70 (where the actual gift value attributable to an individual cannot be determined, the total cost of attendance shall be prorated among all attendees)

IN SUMMARY, based on the information you provided, City employees and officials are not prohibited from accepting tickets and attending events hosted at the MPA. First, the promoter is not a vendor as defined under the Code of Ethics. Second, even if a vendor, under the facts of this arrangement the gifts are not from the vendor, directly or indirectly, since the seats themselves were never leased. However, if the gift consists of the value added by the actual concert, the value does emanate from the promoter's event. If the per person value of the tickets exceed \$100, they must be reported as required by 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/mr/gal