



# Palm Beach County Commission on Ethics

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Alan S. Johnson

August 26, 2011

Mr. Gerry Franciosa  
939 Eve Street  
Delray Beach, FL 33483

RE: RQO 11-073  
Gift Law

Dear Mr. Franciosa,

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 email of August 24, 2011 whether, as a City of Delray Beach Planning and Zoning Board member, you may accept two tickets valued at \$150 each to attend a Delray Beach Chamber of Commerce event from a local attorney who lobbies your board.

IN SUM, you may not accept more than \$100 from a lobbyist who lobbies your advisory board or the municipal department over which your board has authority. Should you chose to accept the tickets, you must reimburse the value of the tickets in excess of \$100 to the donor within 90 days.

THE FACTS as we understand them are as follows:

You were recently appointed to the Delray Beach Planning and Zoning Advisory Board, and your wife is a member of the City's Public Art Advisory Board. You have been invited to attend a Delray Beach Chamber of Commerce fundraising event for local charities as a guest of local attorney, Michael Weiner. Tickets are valued at \$150 per person. Mr. Weiner's firm specializes in real estate law matters and represents clients before the Planning and Zoning Board (P&Z). Mr. Weiner meets with P&Z board members apart from publically noticed quasi-judicial or comprehensive plan hearings. He does not appear before the Public Art board.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics (revised effective June 1, 2011):

Under the gift law provisions, §2-444(b) prohibits advisory board members from accepting more than \$100, in the aggregate over the course of the calendar year, from a lobbyist who lobbies your advisory board or the municipal department that is in any way subject to your board's authority.


Section 2-442 defines a lobbyist as a person who is employed and receives payment for seeking to influence the decision of any employee, official or advisory board member. While Mr. Weiner is an attorney who represents clients before your board, because he meets with department staff and board members outside of publically noticed quasi-judicial or comprehensive plan hearings, he is a lobbyist for the purpose of the code of ethics. Although Mr. Weiner does not appear before your wife's board, you have been invited to attend this event as a couple and as such, under §112.3148, Florida Statutes, and the Florida Administrative Code<sup>1</sup>, the value of her ticket is attributable to you. Should you chose to attend the event, you must reimburse Mr. Weiner the value of the gift in excess of \$100, in this case \$200, and may not accept any additional gift from him over the course of the calendar year without further reimbursement. There is no reporting requirement since a gift in excess of \$100 would be prohibited.

IN SUMMARY, you are prohibited from accepting a gift of a value in excess of \$100, annually, in the aggregate from a lobbyist who lobbies your municipal board or related department, without reimbursing any amount in excess of \$100 within 90 days of the gift. Therefore, while you are not prohibited from accepting the two tickets to the gala event, you will need to reimburse the donor as 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

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<sup>1</sup> Florida Administrative Code §34-13.310(6) Indirect Gifts. *See also* RQO 11-022, RQO 11-024, RQO 11-046