



# Palm Beach County Commission on Ethics

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Alan S. Johnson

September 13, 2011

Peter B. Elwell, Town Manager  
Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480

Re: RQO 11-079  
Gift Law

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on October 6, 2011.

YOU ASKED in your submission dated July 12, 2011 whether the children of Town of Palm Beach (the Town) employees may accept educational scholarships provided by the Palm Beach Country Club and Palm Beach Day Academy.<sup>1</sup>

IN SUM, Town employees are not prohibited from accepting scholarship dollars on behalf of their children by the Palm Beach Country Club and Palm Beach Day Academy, provided that there is no quid pro quo or special treatment or privileges given to either organization in exchange for offering these scholarships. Should the value of the scholarships exceed \$100, they are a reportable gift and must be disclosed in an annual gift reporting form filed with the Palm Beach County Commission on Ethics (COE), or in the case of state reporting individuals, a quarterly gift report filed with the State of Florida and copied to the COE.

THE FACTS as we understand them are as follows,

The children of Town of Palm Beach employees are eligible for several similar educational scholarships. First, The Palm Beach County Club Foundation (Foundation) offers a competitive college scholarship available to high school seniors. Applicants are screened and selected by Foundation members, however town elected officials have participated in the selection process in the past. The Foundation is a registered 501(c)3 non-profit organization and is funded through club membership dues. Second, Palm Beach Day Academy (Academy), a local private school, reserves a limited number of student positions for full tuition scholarships awarded to children of Town employees. When one of these positions becomes available, the Academy advises the Town and as in the case of all scholarship programs, the Town generally informs employees of the opportunity. All applications are received privately and the Town is not involved in the screening or selection process of Academy scholarships. Neither the Foundation nor the Academy are vendors or lobbyists of the Town.

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

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<sup>1</sup> This request initially emanated from RQO 11-057 but addresses separate issues requiring individual advisory opinions.

Section 2-444(g) defines a gift as “the transfer of anything of economic value” and §2-444(f) requires employees to complete an annual gift disclosure report, reporting any gift in excess of \$100 unless one of several exceptions apply. In addressing the gift law requirements, the Commission on Ethics adheres to the Florida state standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code. The Florida Administrative Code suggests that when a gift is provided indirectly with the intent to benefit a public employee, it may be considered a gift to that employee. As is the case here, where scholarship eligibility is contingent upon a parent’s public employment, scholarship funds provided to a child are considered an indirect gift to the parent.<sup>2</sup> Therefore, these scholarships must be included on the parent’s annual gift reporting form.

**Section 2-444(e)**

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

In addition to the reporting requirement discussed above, no employee may take, fail to take or influence other to take or fail to take any action in exchange for the scholarships provided by the Palm Beach Day Academy or the Palm Beach County Club Foundation.


Lastly, §2-443(a)(b) and (c) prohibit a public official or employee from using their official position to obtain a special financial benefit for their children. Therefore, they may not participate in any selection process if they have eligible children applying for either scholarship.

IN SUMMARY, based on the information that you have provided, Town employees are not prohibited from accepting scholarships on behalf of their children from the Palm Beach Country Club Foundation or Palm Beach Day Academy, neither of whom are vendors or lobbyists of the Town, so long as there is no quid pro quo or special treatment or privileges given to either organization in exchange for offering these scholarships. In addition, should the value of these scholarships 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

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<sup>2</sup> See, RQO 11-057 (scholarships available to all residents of the Town are not contingent on public employment and therefore, do not constitute indirect gifts to the public employee parent)