



Palm Beach County Commission on Ethics

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September 13, 2011

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

Re: RQO 11-080
Gift Law/Misuse of Office

Dear Mr. Elwell,

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 July 12, 2011 whether the children of Town of Palm Beach employees may accept educational scholarships sponsored by the Palm Beach Civic Association and the Citizen's Association of Palm Beach and administered by the Town.¹

IN SUM, Town of Palm Beach employees are not prohibited from accepting scholarship dollars on behalf of their children from the Town of Palm Beach. Employees may not use their official position to take, fail to take or influence others to take or fail to take any action in order to secure a scholarship for their child. Should the value of these scholarships exceed \$100, the scholarship funds are a reportable gift. As such, it 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 Palm Beach Civic Association (PBCA) and the Citizen's Association of Palm Beach (CAPB) sponsor competitive scholarships, awarded annually, to a child of a Town employee. The Palm Beach Civic Association is a volunteer organization that encourages residents to take an active interest in Town Affairs, promotes political responsibility through education and advocacy of public policy and supports local government in increasing efficiency, effectiveness and quality of service. The Citizen's Association of Palm Beach is an organization dedicated to protecting, preserving and improving the Town with an emphasis on the interests of condominium and co-operative unit owners. The Town's human resources department receives applications and the selection committee is comprised of the Town's Human Resources Director and one representative from each of the sponsoring organizations. Scholarships are

¹ This request contained separate issues requiring individual advisory opinions. Additional related opinions will reference RQO 11-057.

funded by membership dues; there is no fundraising associated with these scholarships. The PBCA and the CAPB do not sell, lease to or lobby the Town of Palm Beach.

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

Sec. 2-443(a) Misuse of public office or employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

- (1) Himself or herself;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

Unlike the scenarios addressed by this Commission in RQO 11-057, RQO 11-079 and RQO 11-081, the Town is involved in selecting the recipients of these scholarships. Accordingly, no Town employee may use their official position or influence others to use their official position in order to secure a special financial benefit for their child.

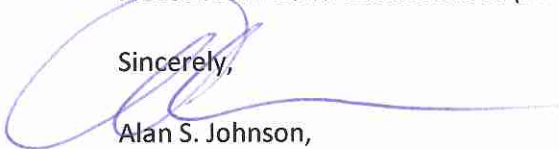
Section 2-444(g) defines a gift as *"the transfer of anything of economic value"* and §2-444(f)(2)b requires employees to complete an annual gift disclosure report, logging any gift in excess of \$100 unless one of several exceptions apply. In addressing the gift law requirements, the Commission on Ethics adheres to the 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. Therefore, these scholarships must be included on the parent's annual gift reporting form.

IN SUMMARY, based on the information that you have provided, the children of Town employees are not prohibited from accepting scholarships from PBCA and the CAPB, however should the value of these scholarships exceed \$100 they must be reported. No Town employee may use their official position to secure a scholarship for their child.

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