



# Palm Beach County Commission on Ethics

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Alan S. Johnson

October 7, 2011

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

Re: RQO 11-081  
Conflict of Interest/Misuse of Office

Dear Mr. Elwell,

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

YOU ASKED in your submission dated July 12, 2011 whether Town of Palm Beach (the Town) police, fire-rescue and paramedics personnel may participate in fundraising events on behalf of several scholarship programs where their children may be eligible to receive scholarship dollars from those funds.<sup>1</sup>

In addition, you asked if these scholarships are prohibited or limited under the Code, whether these concerns would be alleviated by the Town administering the funds and overseeing the application process.

IN SUM, the Code of Ethics prohibits public employees from participating in charitable fundraising in the following circumstances:

- Public officials or employees who are officers or directors of a non-profit organization, or who have a dependent child who may become eligible to receive scholarships, or are participants in any ongoing program established by these organizations, may not use their official public position or title, directly or indirectly, to specially financially benefit themselves, their children or the charitable organization.
- Public officials and employees may not solicit or accept anything of value because of the performance of an official act, or the past, present or future performance or violation of a legal duty.
- Public officials and employees may not solicit a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the municipality they serve for their own personal benefit, the benefit of their relatives or household members or the benefit of another employee or their relatives or household members.

Public safety employees are not prohibited from soliciting or accepting donations for scholarship programs from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists who sell, lease or lobby the Town, as long as there is no quid pro quo or other benefit given for an official act or the past, present or future

<sup>1</sup> This request contained separate issues requiring individual advisory opinions. Additional related opinions will reference RQO 11-057. Specifically, this is a companion opinion to RQO 11-056 (PBPF emergency assistance grants to employees)

performance of a public duty, and so long as they do not use their official position or title if they are eligible for, or receiving grant benefits.

THE FACTS as we understand them are as follows,

Since 2006, the Palm Beach Police Foundation (PBPF) has provided more than \$300,000 in scholarship funding to children of the Palm Beach Police Department (PBPD) employees, about \$8,000 annually per child. In addition to these scholarships, PBPF provides funding for police department supplements such as additional training and equipment and emergency financial assistance to officers.<sup>2</sup> As of fiscal year 2010, the directors of PBPF manage over 1.4 million dollars in assets. No police officer or employee of the police department serves as an officer or director of the PBPF, but many officers are actively involved in fundraising for the organization including attending the Annual Policemen's Ball.

The local Fraternal Order of Police Lodge (FOP), provides scholarships to the dependent children of FOP members, under age 25 who maintain a GPA of 2.0 or above as a full-time student at an accredited college or university. A committee of current and former Town police officers screens applicants and those who meet the minimum requirements are forwarded to the FOP executive Committee, which determines the amount of the scholarships. This past year, the scholarships were \$1,000 each. Scholarship dollars are financed by fundraising events hosted throughout the year.

Finally, the Palm Beach Firefighters and Paramedics Education Fund (PBFPEF), provides IRS 529 accounts for the children of employees of the Town's Fire-Rescue Department (PBFRD) and/or direct payments to qualified private educational institutions on behalf of students who are children of employees of the PBFRD. The primary fundraiser for the PBFPEF is the annual Fireman's Ball. Funds raised each year are disbursed equally to all qualified dependants of PBFRD employees. PBFRD employees are involved in fundraising for this event and several employees serve on the PBFPEF's Board of Directors.

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

Misuse of Office and Charitable Solicitations

Section 2-443 Prohibited Conduct

- (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;
  - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

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<sup>2</sup> PBPF emergency financial assistance grants are the subject of a separate advisory opinion, RQO 11-056.

No employee or official may use their official position or employment to obtain a special financial benefit for themselves, their children, or a non-profit that they serve as an officer or director.<sup>3</sup> As an officer or director of a charitable organization or as an employee whose child is eligible for scholarship dollars, lending one's name and official title to fundraise for that charity would constitute using their position *per se* to specially financially benefit themselves or the charity, to the exclusion of all other charitable organizations similarly situated, resulting in a violation of the misuse of office section of the code.<sup>4</sup>

#### Additional Gift Law Requirements

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>5</sup> Therefore, these scholarships must be included on the parent's annual gift reporting form.

Section 2-444(c) states as follows:

*No county commissioner, member of a local governing body, mayor or chief executive officer when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. (emphasis added)*

An employee of the Town may not solicit anything of value from a vendor or lobbyist of the Town, nor can the solicitation be made by some other person or entity on his or her behalf, if that solicitation is for the benefit of any Town employee, relative or household member.

Section 2-444(e) states as follows:

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.

No employee may take, fail to take or influence others to take or fail to take any action because of the scholarships provided by these foundations or by large donors known to public employees.

While the Code of Ethics ordinarily would allow a public employee to solicit or accept donations on behalf of a charitable organization provided the donations are recorded and filed with the COE<sup>6</sup>, the code prohibits such

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<sup>3</sup> RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would *per se* constitute using their employment or elected office to specially financially benefit that charity)

<sup>4</sup> RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form financial benefit from a non-profit they may not use their official title to specially financially benefit that charity)

<sup>5</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)

<sup>6</sup> §2-444(h)(2)

solicitation from vendors or lobbyists if the gift will benefit any Town public employee, their relatives or household members. Solicitation of non-vendors or lobbyists is not prohibited, provided there is no quid pro quo or other benefit given as a result and the solicitation is in an unofficial capacity, if the person soliciting stands to financially benefit.

The Commission on Ethics is empowered to issue an advisory opinion to *establish the standard of public duty, if any*, regarding the facts of the situation submitted.<sup>7</sup> Accordingly, Commission on Ethics Rules of Procedure provide that *"If deemed appropriate by the COE, additional comment regarding ethics, appearance of impropriety or similar advice to the requesting party based upon the factual scenario as presented"* may be given.<sup>8</sup> The Commission on Ethics normally would not opine as to whether, in order to prevent the appearance of impropriety, you as Town Manager should place additional restrictions on acceptance of these scholarship dollars.

While not prohibited under the Code of Ethics, programs such as these may create an appearance of impropriety where large donations are given and where such a direct financial benefit is received. This is especially true if official acts of PBPD and PBFR are of a discretionary nature. Officers and Fire Rescue personnel must take great care to not take an official action, or perform, fail to perform or violate a legal duty because of a gift that were solicited or accepted by them or on their behalf as prohibited by §2-444(e).

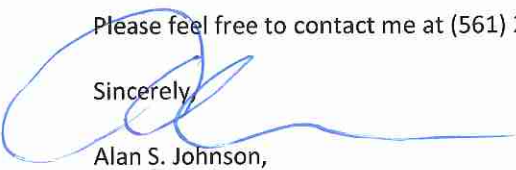
In your request, you asked whether these concerns would be alleviated by the Town administering the funds and overseeing the application process. As in the companion opinion, RQO 11-056 (PBPF emergency grants), we concur with your assessment that should the Town find this program to be for a public purpose and if the Town were to accept the donations on behalf of its employees and the Town were to distribute these donations accordingly, the transparency and accountability concerns surrounding the current program would be mitigated. Donations solicited or accepted on behalf of the public entity for use solely by the Town for a public purpose, i.e., the benefit of Town employees, are not considered gifts under the code and the gift law would therefore not apply.<sup>9</sup> Any abuses in this scenario would be captured under the financial misuse and corrupt misuse sections of the code.

IN SUMMARY, based on the information that you have provided, the children of PBFR and PBPD employees are not prohibited from accepting scholarships from the PBPF, FOP or the PBFPEF, however, Town employees may only solicit donations from persons or entities who are not vendors, lobbyists, principals or employers of lobbyists of the Town. No employee may solicit or accept donations as a quid pro quo for an official action, or otherwise in exchange for the performance of their official duty. Moreover, as an officer or director of the charity, soliciting donations on behalf of that charity using one's official position or title would constitute a violation of the misuse of office portion of the code.

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

<sup>7</sup> Revised Commission on Ethics Ordinance, §2-260.9

<sup>8</sup> COE Rules of Procedure 2.8(f)

<sup>9</sup> §2-444(g)(1)e.