



Palm Beach County Commission on Ethics

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September 13, 2011

Shelley Vana, County Commissioner
Palm Beach County Board of County Commissioners
310 North Olive Avenue, Suite 1201
West Palm Beach, FL 33401

Re: RQO 11-082
Gift Law/Business Development Board

Dear Commissioner Vana,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion. The opinion rendered is as follows.

YOU ASKED in your email dated September 8, 2011, whether it violates the Palm Beach County Code of Ethics for you to accept free admission for two (2) persons to the 2011 Business Development Board Gala, (the BDB Gala), scheduled to be held on September 17, 2011 at "the Breakers" in Palm Beach, from Mr. Kenneth Kahn, President of LRP Publications, Inc. Additional information was obtained from Mr. Kahn by COE Staff via email.

IN SUM, based on the facts presented, you are not prohibited under the PBC Code of Ethics from accepting complementary admission for you and a guest to the BDB Gala from Mr. Kenneth Kahn. Because neither Mr. Kahn nor his employer, LRP Publications, Inc., are vendors, lobbyists, principals or employers of lobbyists who lobby, lease or sell to Palm Beach County, acceptance of complementary admission for yourself and a guest to the BDB Gala from Mr. Kahn, regardless of the value, does not violate the gift law sections of the Code of Ethics.

Because the total value of the tickets is \$500 (based on the event flyer you submitted) it must be timely reported on your State of Florida Quarterly Gift Disclosure Form (Form 9), and a copy sent to the PBC Commission on Ethics.

THE FACTS as we understand them are as follows:

You are a sitting County Commissioner on the Palm Beach County Board of County Commissioners. As such, you are under the jurisdiction of the Palm Beach County Code of Ethics. On Wednesday, August 24, 2011, you received an email message from Mr. Kenneth Kahn, President of LRP Publications, Inc., inviting you and a guest of your choice to attend the BDB Gala as his guests. The BDB Gala is to be held at "the breakers" resort in Palm Beach on September 17, 2011. According to an invitation "flyer" you provided, the cost of each individual admission to the BDB Gala is valued at \$250, for a total cost of \$500 for both you and your guest to attend.

The BDB is a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County. Mr. Kahn is a member of the BDB Gala Host Committee, and the invitation to you was made on behalf of the BDB. They are a vendor of the county but do not employ lobbyists.

Mr. Kahn indicated in his invitation to you that he is not a lobbyist. The Palm Beach County Lobbyist Registration Database verified this information, and also indicated that neither Mr. Kahn nor his employer, LRP Publications, Inc. are principals or employers of lobbyists, who lobby Palm Beach County. Mr. Kahn also advised COE staff via an email that neither he, nor his employer, are vendors of Palm Beach County, or principals or employers of lobbyists that lobby Palm Beach County.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Sec. 2-444. Gift law.

(a)(1) *No county commissioner, member of a local governing body, mayor or chief executive 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 or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable. (Emphasis added)*

Subsection (e) also states that 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 any present or future public action taken, or any legal duty performed, or to be performed. Subsection (f) requires that an elected official who receives a gift in excess of \$100 report the gift in accordance with state law and to submit a copy of the report to the PBC Commission on Ethics.

Section 2-444(g) defines "gift" and lists a number of exceptions to the definition:

(g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.

(1) Exceptions. The provisions of subsection (g) shall not apply to:

j. Expenditures made in connection with an event sponsored by a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County or the municipalities as applicable, provided the sponsor organization does not employ a lobbyist, and further provided that the invitation to the event is made by a representative of the sponsor organization and the representative is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the expenditure must be disclosed in accordance with the gift law reporting requirements of subsections 2-444(f)(1) and (f)(2).


With the exception of reporting requirements, expenditures made by an entity as defined in 2-444(g)(1)j are not considered gifts so long as the non-profit organization does not employ a lobbyist and the invitation to the event is made by a representative who is *not otherwise a vendor, lobbyist, principal or employer of a lobbyist*. BDB is a nonprofit organization as contemplated by this subsection.

IN SUMMARY, based on the facts presented, the Palm Beach County Code of Ethics does not prohibit you, as a Palm Beach County Commissioner, from accepting free admission for yourself and a guest to the BDB Gala as guests of Kenneth Kahn, President of LRB Publications, Inc. so long as the value of the admission is reported in accordance with state law and the applicable provisions of the PBC Code of Ethics and the benefit is not given as a quid pro quo in exchange for an official action taken or legal duty performed .

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/meb/gal