



Palm Beach County Commission on Ethics

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October 7, 2011

Thomas Masters, Mayor
City of Riviera Beach
600 West Blue Heron Blvd.
Riviera Beach, FL 33404

Re: RQO 11-084
Misuse of Office/Gift law

Dear Mayor Masters,

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

YOU ASKED in your email dated September 9, 2011, and forwarded to the COE by Riviera Beach City Attorney Pamala Ryan, whether it violates the Palm Beach County Code of Ethics for you and other members of the Riviera Beach City Council to direct \$45,000, semi-annually, from Waste Management of Florida, Inc. (WMF) pursuant to contract, to be donated to "charitable events, not-for-profit organizations, or City functions or projects." Each City Councilperson personally determines what organization will receive up to \$7,500 of the funds semi-annually; however, the donations are made directly by WMF to the event, organization or city project. The total distribution annually is \$90,000. Additional information was provided by Ms. Ryan.

IN SUM, the Code of Ethics prohibits any member of a local governing body, or mayor if not a member of a local governing body, from soliciting or accepting, directly or indirectly, any gift of a value of more than \$100 annually, from any person or entity who is a vendor of a municipality. Under your current system, these "discretionary funds" never become a part of the City of Riviera Beach (RB) general revenue, and instead are given by Waste Management directly to various organizations under the direction of a single elected official. Where monies are never made a part of the City account, but are expended for a specific non-governmental use by a vendor at the direction of a single elected official, these funds are considered a transfer of value within the Code of Ethics definition of gift. Therefore, the current system of direct distribution of funds by Waste Management to any non-City entity or program in this manner is prohibited by the Code of Ethics.

THE FACTS as we understand them are as follows:

Waste Management entered into a contract with the City of Riviera Beach to be the exclusive provider for the collection and disposal of residential and commercial solid waste material within the City, Between March 1, 2011 and September 30, 2016. This contract was adopted by the City Council under Resolution Number 13-11, on February 10, 2011. Included within this resolution and contract is Section 23.3, which states in relevant portion:

"As a community benefit to the City, Contractor agrees to contribute the sum of \$90,000 to the City per year for use by elected officials for public purposes. The City Council shall determine by resolution what types of community services will qualify for the program. Forty-five thousand dollars (\$45,000) will be made available for use on October 1st and April 1st of every year until the expiration of this Agreement

and any renewals. Payment will be made by the Contractor, on behalf of the City, directly to the entity designated by the City Council."

On May 4, 2011, the City Council adopted Resolution number 63-11. This resolution addresses the Waste Management contribution and the process of distributing these funds. Section 1, sub paragraph II, of the resolution states in pertinent part:

"Each elected official shall be entitled to designate up to \$15,000 per year (\$7,500 on October 1st and \$7,500 on April 1st) for public purposes. Public purposes include, but are not limited to, charitable events, not-for-profit organizations, or City functions or projects, including, for example, contributions to the City's Scholarship Fund or the City's Housing Trust Fund. Payment will be made directly by Waste Management to the entity/agency/organization chosen by the elected official."

Based on these resolutions, the City never receives any of the funds directly. The six individual elected officials (five Councilpersons and the Mayor), may each personally determine the distribution of one-sixth of these funds under Resolution 13-11. Once an elected official determines what entity they wish to receive funds, they complete a Request for Donation Form, which is then reviewed by both the City Attorney and the City Manager to make sure the funds are for a "public purpose" as defined in the resolutions. Funds are then distributed directly to the receiving entity by Waste Management. The Council as a whole does not vote on the individual disbursements, but the disbursement itself is placed on a City Council meeting agenda after the fact, and may be discussed by any Council member, the Mayor, or during public comment at this meeting.

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

Sections 2-443(a)(b) and (c) prohibit an public official from using his or her official position to specially financially benefit certain entities or persons in a manner not shared by similarly situated members of the general public. In this instance, a member of the council may not direct the distribution of funds to non-profit entities where they or their spouse or domestic partner is an officer or director. Neither can they specially financially benefit a spouse, relative, outside employer, customer or client or debtor or creditor. Subsection (c) prohibits voting or participating in matters that would financially benefit these persons or entities in a manner not shared with other similarly situated entities or individuals.

The relevant sections of the gift law are as follows:

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)
- (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. (Emphasis added)
- (1) Exceptions. The provisions of subsection (g) shall not apply to:
 - e. *Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose;* (Emphasis added)

THE RATIONALE behind limiting gifts solicited by vendors of a public entity is grounded in the desire to avoid the appearance that these gifts are made to obtain access or engender the good will of public employees or officials. When funds are solicited or obtained from vendors by officials, there is an exception that applies to the limitations and prohibitions only when they are actually *solicited or accepted by the official on behalf of the municipality in performance of their official duties for use solely by the municipality for a public purpose.*

Under the facts and circumstances in this case, although the funds are earmarked by contract, they do not come within the municipal budget to be spent (used) by the municipality directly for public purpose. Although there are resolutions by the municipality establishing the overall structure of this enterprise, the scrutiny and transparency ceases at that point and the process becomes a personal fund doled out by individual councilpersons and approved by staff. Most importantly, the donations are given directly by the vendor to the recipient, without inclusion into the public budget. Any acknowledgement is by discussion at a public meeting after the fact. To the extent that these donations are given to private entities, they would constitute a gift, given by the City vendor on behalf of the councilperson and prohibited if in excess of \$100. There is no such prohibition regarding donations to RB departments or events, as these would in fact be solicited or accepted into the government and spent by the government for public purposes.

If the \$90,000 was given directly to RB, and the municipal council was to determine its distribution in their capacity as the governing body of RB, the decisions of how the council spends the budget would by definition become a *use solely by the municipality for a government purpose.* The indirect distribution of funds by the vendor cannot be so defined.

IN SUMMARY, based on the facts presented, the current system of distribution of funds to non-public entities made directly by a City vendor, where a single elected official determines and directs which entity shall receive these funds, is prohibited by Section 2-444(a)(1) of the Code of Ethics as an indirect acceptance or solicitation of a prohibited gift.

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