



Palm Beach County Commission on Ethics

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October 7, 2011

Ms. Lisa Tropepe
Engenuity Group, Inc.
1201 Belvedere Road
West Palm Beach, FL 33405

Re: RQO 11-085
Misuse of Public Office or Employment/Voting Conflicts

Dear Ms. Tropepe,

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 12, 2011, forwarded to the COE by the Office of the Inspector General, whether it violates the Palm Beach County Code of Ethics for you, as a shareholder of the engineering and consulting firm, Engenuity Group, Inc. (EG), to work as both designer and inspector on a project, where a construction company is contracted by a municipality or other local government entity to work on the same project, if your step-son is a truck driver employed by that construction company. COE staff obtained additional information regarding this issue from several follow-up email exchanges.

IN SUM, under the facts you have submitted, where you or your outside business, EG, are contracted by a local municipality or other governmental entity to design and oversee a specific engineering project, and where you or EG have no power to determine what specific contractor is engaged by the client municipality to complete the work on that project, and where your contract with the municipality does not indicate that you are engaged as *contract personnel* or *contract administrator performing a government function*, you are acting as a "vendor" for the municipality, not as a contract employee. Therefore, the Code's prohibition against giving any "special financial benefit" to certain persons or entities does not apply.

However, where you are contracted by a municipality as a *Town Engineer* to review and oversee all engineering projects within a municipality, you are *performing a government function* as contemplated by the Code, and assume the role of contract employee under its provisions. You therefore are prohibited from taking or influencing others to take any official action that would give your step-son's employer a "special financial benefit" not available to other similarly situated contractors.

Lastly, as a Council Member of the Town of Palm Beach Shores (the Town), you and your outside business are prohibited from entering into any contract for goods and services with the Town unless one of several exceptions applies. You are further prohibited from voting on or participating in any matter that would give a special financial benefit to your outside employer, your step-son or his employer.

THE FACTS as we understand them are as follows:

You are a shareholder in the engineering and consulting firm of EG, located in West Palm Beach. Your firm enters into contracts to design and oversee certain engineering projects for municipal and other local government

agencies. For most of these governmental entities, EG is a "vendor" of the government organization, working within a contract for a particular project.

For two smaller municipalities within Palm Beach County, EG is retained as "Town Engineer." For these municipalities your company reviews applications for building permits, and supervises any ongoing maintenance or construction of public facilities. You are also the vice-mayor, and an elected member of the Town Council of a third municipality, the Town.

You advised that your step-son has been offered employment by a construction company as a truck driver. Prior to him accepting this employment, you asked how this employment would affect your engineering company's ability to work on local government contracts where your step-son's company was hired by the municipal client to participate in the project, and where your company has oversight responsibilities on the project as part of EG's contractual responsibilities to the client.

Lastly, you stated that on all of these projects the municipal client determines which construction company will be contracted for a project. This is sometimes done through a closed bid process, and sometimes based on a contractor's particular skills. While the municipal client may on occasion ask EG for advice as to a contractor's knowledge and ability to perform the type of work to be conducted, neither you nor your firm has any other input as to the selection of contractors by the municipalities.

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) of the Code of Ethics prohibit a 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. Included in this prohibition are certain family relatives of the official, including "step-son." Subsection (c) also prohibits officials from 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. In addition, §2-443(b) prohibits an official or employee from using their official position to specially financially benefit any person or entity if done with corrupt intent.

Whether §2-443(a) or (b) apply to you in a particular situation depends upon the relationship you and/or EG has with a government client. Where you or EG serve only as a vendor on a project, even though as the designer you may also oversee the project's completion, you are not performing a government function within the meaning of the Code of Ethics, but rather act as a vendor/contractor, unless the terms of your contract specifically indicate otherwise.

However, where you or EG are contracted as a "Town Engineer," and have general oversight responsibilities for all projects within a particular municipality, you do fall under these Code provisions as a contract employee as defined in §2-442.

The term "employee" includes...contract personnel and contract administrators performing a government function...

As a contract employee you are prohibited from taking any action that would give your step-son or his employer any "special financial benefit" not available to other contractors, or potential contractors, for that municipality. Finally, as a member of the Palm Beach Shores Town Council, as an elected official, your company may not enter into any contract for goods and services with the Town, unless the contract comes under a specific exception to this prohibition, nor may you vote or participate in any discussion concerning a matter that may result in a special financial benefit to your step-son or his employer.

Ordinarily, as a contract employee, you and your outside business would be prohibited from contracting with your municipal employer as well. However, §2-443(d), contractual relationships, specifically states that this section

shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality.

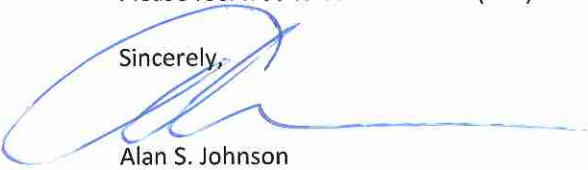
IN SUMMARY, as an elected official or a contract employee performing a government function you are prohibited from using your official position to give a financial benefit, not available to other similarly situated contractors, to your outside employer or the outside employer of your step-son. In regard to your elected status, you may not vote or participate in such a matter. Where you are serving as a "Town Engineer" for a municipality, the official designation coupled with the expanded role encompassing all municipal projects takes you out of the realm of outside contractor and into a scenario that places you and your firm into a quasi-public role. Under these circumstances you are subject to the financial misuse and other sections of the code as a contract employee.

However, under the specific facts you have submitted, if you or EG are contracted on an individual project to oversee that project, without any further authority, and the terms and conditions of your relationship to the municipality do not indicate a quasi-public official role, such a relationship would not make you a contract employee under 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/meb/gal