



Palm Beach County Commission on Ethics

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September 16, 2011

Mr. James M. Reid, Jr.
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411-3815

Re: RQO 11-086
Misuse of public office or employment

Dear Mr. Reid,

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 13, 2011, whether it violates the Palm Beach County Code of Ethics for employees of Palm Beach County Fire Rescue to participate as a group in the Florida or Powerball Lotteries. You further asked, if you use your personal computer at home to scan copies of lottery tickets purchased, may you email these copies to your coworkers using the county email system.

IN SUM, the Palm Beach County Code of Ethics does not prohibit county or municipal officials or employees from participation in the Florida or Powerball Lottery, either individually or as a group. However, while not within any Code prohibition, participation by on-duty personnel, or the use of a governmental computer or email system for personal purposes, such as to distribute copies of the lottery tickets to fellow employees, may be governed by workplace policies which would have to be addressed through county or PBFR management.

THE FACTS as we understand them are as follows:

You are an employee with Palm Beach County Fire Rescue (PBFR), a Palm Beach County governmental agency. When the Florida Lottery and/or the Powerball Lottery reach a particular payout amount, you and other PBFR employees, pool your funds and purchase lottery tickets. Participation in the lottery is open to any PBFR employee working at Fire Station 73. Once the tickets are purchased, they are scanned into a computer, and emailed to all participants. You also stated that you have the ability to email these tickets via your home computer to employees.

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

There are no sections of the Palm Beach County Code of Ethics that specifically prohibit or regulate the issue you present. Section 2-443(a), *Misuse of public office or employment*, prohibits the use of your position as a county employee to obtain or give a "special financial benefit" to yourself or other

2633 Vista Parkway, West Palm Beach, FL 33411 561.233.0724 FAX: 561.233.0735

Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com

Website: palmbeachcountyethics.com

specified persons or entities, not available to similarly situated members of the general public. However, that section does not apply to the facts you present since participation in the lottery is legal, available to anyone and administered by the state government.


Section 2-443(b), *Corrupt Misuse of Official Position*, prohibits you from using your official position, or any property or resource within your trust, to "corruptly" secure a special privilege, benefit, or exemption for yourself or any other person. However, under the Code, the term "corruptly" means, "done with wrongful intent," and "inconsistent with the proper performance of his or her public duties." While the use of the county email system for personal messages may be prohibited under county or PBFR policy, under these facts it would not rise to the level of being a corrupt misuse.

IN SUMMARY, based upon the facts you have submitted, the Palm Beach County code of Ethics does not prohibit county employees from playing the Florida or Powerball lotteries, which are both authorized and sanctioned lottery systems by the State of Florida, either individually or as a group. Further, the use of county email to send personal messages as described does not reach the level of being a *corrupt misuse of official position*. The COE cannot opine as to whether such actions are prohibited, limited or regulated by county or PBFR policy.

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