



Palm Beach County Commission on Ethics

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October 7, 2011

Mr. Joseph Panella
Downtown Boca Raton Advisory Committee
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 11-088
Voting Conflicts

Dear Mr. Panella,

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 19, 2011, whether it violates the Palm Beach County Code of Ethics for you, as an employee of AT&T, a vendor of communication services to the City of Boca Raton, to serve on either of two (2) Boca Raton Advisory Boards, The Downtown Boca Raton Advisory Committee (DAC), and The Zoning Board of Adjustment (ZBA). Additional information was obtained by COE staff from you during several follow-up email exchanges, and from the City of Boca Raton governmental website¹.

IN SUM, it does not violate the Code of Ethics for you to serve on either the Downtown Boca Raton Advisory Committee or the Zoning Board of Adjustment, where your outside employer, AT&T, is a vendor of communication services to the City of Boca Raton, providing that neither of the advisory boards of which you are a member provide regulation, oversight, management, or policy-setting recommendations regarding Boca Raton's contracts or transactions with AT&T, and providing that this conflict is disclosed at a duly noticed public meeting of the City Council.

THE FACTS as we understand them are as follows:

You are a resident of the City of Boca Raton (the City) and an employee of AT&T. AT&T is a vendor who provides communications services to the City. You advise that your employment activities within AT&T are not related to any services provided by AT&T to the City.

You are also a volunteer member of two (2) separate advisory boards for the City, the Downtown Boca Raton Advisory Board (DAC), and the Zoning Adjustment Board (ZAB). You were appointed to serve on these advisory boards by the City Council. The DAC is purely advisory, and provides input and recommendations to the Community Redevelopment Agency (CRA) and the City Council regarding the

¹ www.ci.boca-raton.fl.us/city/brdcomm.shtm

present and future redevelopment of downtown Boca Raton. The ZAB is not purely advisory, and hears quasi-judicial matters involving the interpretation of any provision of the Code upon appeal from a decision of the Zoning Administrator. Neither of these boards provides any regulation, oversight, management, or policy-setting recommendations regarding services provided to the City by AT&T.

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

The relevant portions of Section 2-442, *Definitions*, of the PBC Code of Ethics define "Advisory Board" as any advisory or quasi-judicial board created by the local municipal governing bodies, and defines "Official" as a member appointed by the local municipal governing board to serve on any advisory, quasi-judicial or any other board. Section 2-442 also defines an "Outside employer or business" as any entity other than a governmental entity, of which the official is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. Finally, this section defines a "Vendor" as *any person or entity... who currently sells goods or services...to a municipality, and includes any owner, director, manager or employee.*

Under this section of the Code and based on the facts you presented, AT&T is your outside employer and a vendor of the City. Both DAC and the ZAB are advisory boards. And, because you were appointed to both of these volunteer positions by the City Council, the governing board for this municipality, you are an "Official" within the meaning of the Code of Ethics.

Section 2-442(a)(1-7) and (b) of the Code of Ethics prohibits the use of your official position as an advisory board member from financially benefiting certain persons and entities, including your outside employer, in a manner not shared with similarly situated vendors seeking to transact business with the City or from corruptly benefiting any person or entity.

Section 2-442(c), *Disclosure of voting conflicts*, requires that should any matter that would specially financially benefit any person or entity described in Section 2-442(a)(1-7), including your outside employer AT&T, come before either of your advisory boards, you must disclose this conflict at the public meeting where the issue is to be addressed, abstain from voting and not participate in the matter. You must further file a State of Florida Commission on Ethics Conflict Form 8B with the City clerk and provide a copy to the PBC Commission on Ethics.

Lastly, section 2-443(d) prohibits an official from entering into *any contract or other transaction for goods or services with their respective...municipality.* This prohibition extends to all contracts or transactions between the municipality, and the official, directly or indirectly, *or the official's outside employer or business.* However, the prohibition does *not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

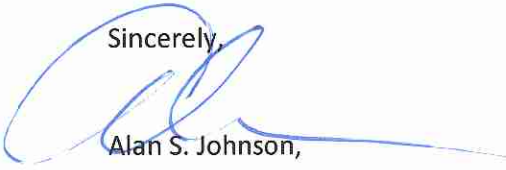
Based on the facts and circumstances you have provided, contracts or transactions between the City and AT&T are not subject in any way to either the DAC or ZAB boards. Therefore, notwithstanding the fact that your employer transacts business with the City, you are permitted under the Code of Ethics to disclose the relationship and continue as a board member.

IN SUMMARY, so long as the relationship is disclosed at a City Council meeting, and the advisory boards you serve on provide no regulation, oversight, management, or policy-setting recommendations regarding services provided to Boca Raton by your outside employer, and providing that you disclose, abstain and not participate in any matter that may come before either advisory board concerning your outside employer², you are not prohibited from serving on the DAC and ZAB volunteer advisory boards for the City of Boca Raton.

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

² For example, a zoning issue within the City involving AT&T.