

Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

December 1, 2011

Bonni S. Jensen, Esquire
Perry & Jensen, LLC
400 Executive Center Drive, Suite 207
West Palm Beach, FL 33401-2922

Re: RQO 11-089
Gift Law/Retirement Boards

Dear Ms. Jensen,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on October 6, 2011, and on November 3, 2011, and again on November 30, 2011, and rendered its opinion at a public meeting on November 30, 2011.

YOU ASKED in your letter dated September 22, 2011, whether Trustees of the Firefighter Board of Trustees, Town of Palm Beach Retirement System (FBT), who are subject to the Palm Beach County Commission on Ethics, must report "salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the [Trustees] employment, business or service as an officer or director of a corporation or organization?" You also asked if a Trustee nominated or selected by the other four (4) Trustees to this retirement board, but ultimately appointed by the governing body of the Town, is subject to the jurisdiction of the Palm Beach County Commission on Ethics.

IN SUM, local officials and advisory board members who are state reporting individuals are required to report gifts quarterly, in accordance with state law, and are therefore not subject to the annual gift reporting requirements under §2-444(f)(2)b. of the Palm Beach County Code of Ethics. A state reporting individual is responsible to comply with those reporting requirements as contained within state law.

Although the FBT itself is a state created board and therefore not an advisory board as defined in the Palm Beach County Code of Ethics,¹ trustees who are appointed by the governing body of the Town of Palm Beach (the Town), are considered "officials" and subject to the code. The fact that one appointment is based on a selection by the existing Trustees does not negate the fact that the ultimate appointment is made by the governing body and the appointee is therefore subject to the Code of Ethics.²

THE FACTS as we understand them are as follows:

You are legal counsel for the Firefighters Board of Trustees (FBT), within the Town of Palm Beach Retirement System (RS). The RS was created by a Palm Beach Ordinance in accordance with Chapter 112, Florida Statutes. The FBT's authority was created pursuant to Chapter 175, Florida Statutes, and is contained within Section 82-86 of the Town Code. The FBT is comprised of five (5) members. Two (2) are chosen and appointed by the Town

¹ §2-442, RQO 11-060 (Boca Raton Police and Firefighters' Retirement System established pursuant to chapters 175 and 185 of the Florida Statutes, is not an advisory board as defined in the PBC Code of Ethics, however, appointees of the Boca Raton governing body are considered "officials.")

² RQO 11-035, RQO 11-060, id.

Council. Two (2) are employees of the Town and are elected by the members in the retirement fund. The fifth member is chosen by the other four Trustees, but is actually appointed by the Town Council, in what you refer to in your letter as, "a ministerial duty by the Town." The Town of Palm Beach (the Town) is ultimately responsible for funding the System. You also advise that it is the Town that actually appoints this fifth trustee to the Board.

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

Section 2-442 defines *Advisory board* to mean "any advisory or quasi-judicial board created...by local municipal governing bodies, or by the mayors who serve as chief executive officers... of local municipal governing bodies." While the FBT is governed by local ordinance, the board is authorized by state statute. It is not "created by" the local municipal governing body and is, therefore, not an advisory board.

However, §2-442, defines "Official" as a member appointed by the local municipal governing body to serve on any advisory, quasi-judicial or *any other board of the county, state, or any other regional, local, municipal, or corporate entity*. The Code does not make a distinction as to whether the governing body is making such an appointment in any particular manner. The fact that one Trustee on the FBT is initially chosen as a candidate by the other four Trustees is immaterial to the manner in which that person formally becomes a Trustee on the Board when appointed by a vote of the governing body. The governing body, in particular one that is, "responsible to fund the benefits of the Plan," under state law³, can choose not to appoint a particular individual and require that another candidate be selected. Again, the relevant fact is that while the initial choice of a potential candidate is made by the other Trustees, the appointment itself is made by the governing body.

A member of the FBT, appointed by the Palm Beach Town Council, is under the jurisdiction of the COE as to all sections of the Code of Ethics applicable to officials.

Section 2-444(f)(1) states, "Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. Under this section of the Code of Ethics, members of the FBT are "state reporting individuals" and must comply with all state requirements. The COE cannot opine as to any specific reporting requirements under state law.

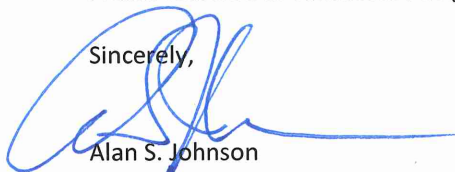
IN SUMMARY, regardless of who refers a candidate for FBT appointment, FBT Trustees who are appointed by the Palm Beach Council are subject to the PBC Code of Ethics and the jurisdiction of the COE as "officials." Those Trustees who are Town of Palm Beach employees are subject to the code as "employees" as well.

FBT Trustees are subject to state gift reporting requirements as listed under Chapter 112, Florida Statutes and must report as required by state law.

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

³ Pursuant to Sections 112.66 and 175.091, Florida Statutes (2011)