



# Palm Beach County Commission on Ethics

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Alan S. Johnson

November 4, 2011

Mr. Jeffrey Kurtz, Esq.  
Northpoint Corporate Center  
701 Northpoint Parkway, Suite 209  
West Palm Beach, Florida 33407

Re: RQO 11-092  
Voting Conflicts

Dear Mr. Kurtz,

The Commission on Ethics considered your request for an advisory opinion and rendered its opinion at a public meeting held on November 3, 2011.

YOU ASKED in your letter of September 30, 2011 whether a municipal councilperson whose outside business provides engineering services to Palm Beach County may vote on inter-local agreements between the municipality she serves and her government customer or client.

IN SUM, Officials whose outside business or employer contracts with other governments are not prohibited from voting on contracts between their government-client and the government they serve, provided that the inter-local agreement is unrelated to their business relationship with the government-client. However, voting on issues that may result in a special financial benefit to their outside employer or business would violate the misuse of office provisions of the Palm Beach County Code of Ethics.

When presented with a situation that would benefit themselves, or their outside employer or business, an official must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process.

THE FACTS as we understand them are as follows:

You are the Village Attorney for the Village of Wellington (The Village). Wellington Councilperson Anne Gerwig is married to Alan Gerwig who is a principal in the engineering firm of Alan Gerwig and Associates, Inc. (The firm). Councilperson Gerwig is an employee and has an ownership interest in the firm. The firm has contracts to provide engineering services to Palm Beach County and acts as a sub-consultant on projects for the County as well. Over the past 24 months, the firm has been paid more than \$10,000 for engineering services and as a sub-consultant on projects for Palm Beach County.

The Village enters into interlocal agreements with the Palm Beach County including specific county agencies on a reoccurring basis. For example, the County provides supplemental payments to the Buck Program for children to receive swimming lessons from Village personnel at the Village pool. This

agreement between the Village and the County has no direct or indirect connection with the services provided to the County by the Firm.

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

Section-2-443 prohibits officials and employees from using their official position to give themselves, their outside business, or a customer or client of their outside business a financial benefit, in a manner which they *know or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public.* While §2-442 exempts governmental entities from the definition of outside employer or business, no such exemption exists within the definition of customer or client. A customer or client is defined as a person or entity to which an employee or official's outside business has supplied goods or services in excess of \$10,000 over the previous 24 months. As such, Palm Beach County would constitute a customer or client of the firm.

Section 2-443(c) similarly prohibits officials from voting on an issue or participating in a manner that would result in a special financial benefit attributable to themselves, their outside business or a customer or client as previously described. Essentially, the voting conflict section addresses the scenario whereby an official would violate the misuse of office prohibitions of the code by voting. In such a scenario officials are required to 1) disclose the nature of their conflict before the Council discusses the issue; 2) abstain from any discussion or vote and not participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the board, council or commission clerk and the Palm Beach County COE.<sup>1</sup>

The plain language of the code requires abstention when a vote would result in a *special financial benefit.* The issue of a special financial benefit turns on whether that financial benefit is shared with similarly situated members of the general public. While Palm Beach County is a customer or client of Councilperson Gerwig's outside business or employer, voting on matters unrelated to her outside business but benefiting the County would not result in a special financial benefit to her public customer or client, as a government entity represents all residents within its political boundaries.

Since any benefit or loss obtained by the County would apply to all residents of the County, the financial benefit, should one exist, rests universally with all residents of Palm Beach County. A prohibited financial benefit would result only if there are circumstances unique to Councilperson Gerwig which would enable Councilperson Gerwig, her husband or his or her outside business or employer to gain more than other county residents.

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<sup>1</sup> §2-443(c)

Accordingly, should a matter come before the Village Council that would benefit Councilperson Gerwig, her husband or his or her outside business or employer, she must abstain from voting and not participate, even if the matter involves a contract with the County.

IN SUMMARY, based on the facts you have submitted, Councilperson Gerwig are not prohibited from voting on inter-local agreements involving the Village and Palm Beach County, notwithstanding the fact that Palm Beach County is a customer or client of the engineering firm of Alan Gerwig and Associates, Inc., provided that the inter-local agreement does not give Councilperson Gerwig, her husband, or the Firm, a special financial benefit.

When presented with a situation that would result in a special financial benefit for you, your outside business or employer, or the business or employer of your spouse, you must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process.<sup>2</sup>

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/gal

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<sup>2</sup> Sec. 2-442 definitions excludes a government entity from the definition of *outside employer*. Where an official's outside employer is another government entity sec. 2-443(4) does not apply. RQO 10-026, 11-036 OE, 11-045