



Palm Beach County Commission on Ethics

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November 4, 2011

Jennifer Ray, Fiscal Coordinator
City of Palm Beach Gardens
10500 North Military Trail
Palm Beach Gardens, FL 33410

Re: RQO 11-094
Conflict of Interest/Misuse of Office/Gift Law

Dear Ms. Ray,

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

YOU ASKED in your submission dated October 7, 2011 whether, as municipal employees, you and your husband may participate in fundraising efforts on behalf of Project Graduation for Palm Beach Gardens High School where your son plans to attend the event.

IN SUM, the Code of Ethics prohibits public employees from participating in fundraising in the following circumstances:

- Public officials or employees who have a dependent child eligible to receive a financial benefit may not use their official public position or title, directly or indirectly, to specially financially benefit their children.
- Public officials and employees may not solicit or accept anything of value because of the performance of an official act, or the past, present or future performance or violation of a legal duty.
- Public officials and employees may not solicit a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the municipality they serve for their own personal benefit, the benefit of their relatives or household members or the benefit of another employee.

Public employees are not prohibited, in their personal capacity, from soliciting or accepting donations for the benefit of their children, from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists who sell, lease or lobby the City, as long as there is no quid pro quo or other benefit given for an official act or performance of a public duty, and so long as they do not use their official position or title if they are eligible for, or their children are eligible for a special financial benefit.¹

THE FACTS as we understand them are as follows:

You and your husband are employees for the City of Palm Beach Gardens and have volunteered to work with other parents for your son's Project Graduation for Palm Beach Gardens High School. Project Graduation is an all-night,

¹ RQO 11-056, RQO 11-081 (charitable fundraising involving scholarships to children of public employees)

drug and alcohol free celebration for graduating seniors. Historically, the committee has solicited from businesses across Palm Beach County through sponsorship letters. Several of the businesses solicited are vendors of Palm Beach Gardens. All funds are paid directly into the Project Graduation 2012 account.

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

Misuse of Office and Charitable Solicitations

Section 2-443 Prohibited Conduct

(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows 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*, for any of the following persons or entities:

(3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

No employee or official may use their official position or employment to obtain a special financial benefit for their children.² As a City employee whose son plans to attend the Project Graduation Event, lending your name *and official title* to fundraise for the event would constitute using your position *per se* to specially financially benefit your son resulting in a violation of the misuse of office section of the code.³

Additional Gift Law Requirements

Section 2-444(c) states as follows:

No... employee, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. (emphasis added)

While the Code of Ethics ordinarily would allow public employees to solicit or accept donations on behalf of a charitable organization provided that the donations are recorded and filed with the COE⁴, the code prohibits such solicitation from vendors or lobbyists if the gift will benefit the public employee, his or her relatives or household members or any other official or employee of their government. In this case, the Project Graduation solicitation would benefit your son who also happens to be a city employee. Accordingly, you may not knowingly solicit anything of value from a vendor or lobbyist of the Town, nor can the solicitation be made by some other person or entity on your behalf. However, you are not prohibited from soliciting or accepting donations for the program from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists who sell, lease or lobby the City, as long as there is no *quid pro quo* for an official action and the solicitation is not in your official capacity.

IN SUMMARY, based on the information that you have provided, your son is not prohibited from attending the Project Graduation events and you are not prohibited from soliciting in your private capacity on behalf of Project

² RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

³ RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form financial benefit from a non-profit they may not use their official title to specially financially benefit that charity)

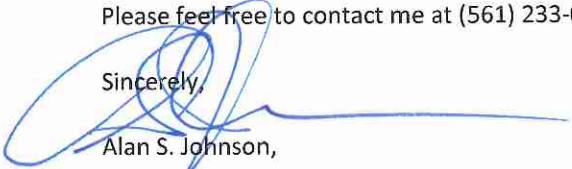
⁴ §2-444(h)(2)

Graduation, so long as you solicit donations from persons or entities who are not vendors, lobbyists, principals or employers of lobbyists of the City. No employee may solicit or accept donations as a quid pro quo for an official action, or in exchange for the performance of their official duty. Finally, you may not solicit donations from anyone, using your official position or title, for the benefit of your son. To do so would constitute a violation of the misuse of office provision of the code.

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/mr/gal