



Palm Beach County Commission on Ethics

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October 21, 2011

Ms. Amanda Liebl, Youth Program Director
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 11-095
Vendor prohibitions

Dear Ms. Liebl,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows.

YOU ASKED in your submission dated October 11, 2011 whether the City Recreation Services Department may charge food vendors at the City's Annual Winter Children's Fair on a percentage basis and charge other non-food vendors a fixed cost per table.

IN SUM, the municipal jurisdiction of the Commission on Ethics (COE) is limited to the Countywide Code of Ethics.¹ Opinions must be based upon the application of the code to a set of facts and circumstances. When a City makes a policy determination, the COE will not opine as to the suitability of the policy or procedure unless a section of the code is implicated.

THE FACTS as we understand them are as follows;

The City of Boca Raton (the City) holds an annual Winter Children's Fair in December. In addition to rides and games for children, the City markets vendor booths for restaurants and businesses to sell goods and services to attendees. The City charges a reservation or rental fee for each booth. This year, the City plans to charge food-booth operators a percentage of the amount earned during the fair, while charging other operators a flat rate. Operators do not sell or lease goods or services to the City and there is no bid process, offer or request for sale in connection with these booths.

THE LEGAL BASIS for this opinion rests in the jurisdiction conveyed to the Palm Beach County Commission on Ethics through the Commission on Ethics and Code of Ethics ordinances. While the code of ethics regulates employee and official's conduct with regard to vendors, booth operators who lease

¹ Article V, Division 8, section 2-258 (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the: (1) Countywide Code of Ethics;

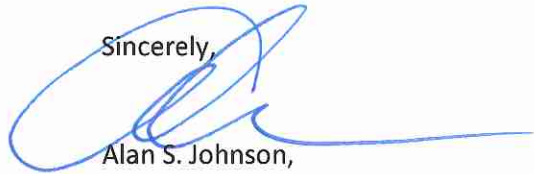
space from the City and do not provide goods or services to the City are not vendors as defined by the code of ethics.² As such, Code of Ethics subsections regulating municipal vendors³ are not implicated in regard to either the booth operators' participation in the fair or City discretion to determine the method of charging booth operators for the space. Your advisory opinion request contains no facts or circumstances to indicate that the policies and procedures proposed by the City involve misuse of office for special financial gain, corrupt misuse of official position or any other regulation or prohibition contained within the Code of Ethics.

IN SUMMARY, based on the facts and circumstances you submitted, the COE cannot opine as to matters that involve City policies and procedures that are not subject to its jurisdiction.

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

cc: Diana Grub Frieser

² 2-442 Vendors, RQO 11-022, RQO 11-069

³ E.g., Article XIII, Section 2-444 (Gift law)