



Palm Beach County Commission on Ethics

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Alan S. Johnson

November 4, 2011

Cale Curtis, Acting Finance Director
Town of Highland Beach
3614 South Ocean Blvd.
Highland Beach, FL 33487

Re: RQO 11-096
Request for Quote Process/Misuse of Office

Dear Mr. Curtis,

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 email dated October 17, 2011, whether the current Attorney for the Town of Highland Beach (the Town) who has resigned his position as of December 31, 2011, may meet for lunch with Town employees or officials to discuss the RFQ process to select his replacement where the current contract is with the attorney's law firm and not specifically with the attorney himself.

IN SUM, an employee may not use his or her official position to obtain a financial benefit not shared by similarly situated members of the general public for himself or his outside business or employer. A contract for services or a renewal of a service contract is of financial benefit to an applicant. Therefore, a contract employee of the Town, with a pending application before the Town, may not discuss the application with officials or employees unless all other applicants are given the same opportunity in the same manner as the employee. This extends to an application submitted by the employee's outside business or employer.

THE FACTS as we understand them are as follows:

You are the acting Finance Director for the Town of Highland Beach (the Town). The Town intends to advertise an RFQ for the position of Town Attorney. The Current Town Attorney, through his law firm, has an active annual contract with the Town. The contract extends year to year unless a party gives written notice of termination prior to the annual expiration. In addition, either party may terminate the agreement at any time upon 30 days notice provided to the other party. The contract is with the attorney's law firm, not with the individual attorney. The current attorney has resigned his position effective December 31, 2011. Specifically, you had concerns regarding "the current attorney and a staff member/commissioner going to lunch together and discussing the RFQ process with regard to the attorney's participation."

Applicants for the position will be required to go through an interview process with Town staff and elected officials, however, these are official proceedings and do not encompass private meetings such as a business lunch. Private meetings with staff or commissioners will not be offered to the RFQ applicants.

When you first submitted this request, it was unknown whether the current Town Attorney would apply. Although the current attorney has since submitted his resignation, the RFQ process will allow his law firm to apply for the position as advertised. At this time, you do not know who will be applying for this position. Under these circumstances, you wish to proceed with your request for an advisory opinion.

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

Palm Beach County Code of Ethics sec. 2-443(a) prohibits an official or employee from using his or her official position to obtain a special financial benefit, *not shared with similarly situated members of the general public*, for him or herself, or his or her outside business or employer. Section 2-443(b) prohibits an employee from using an official position to *corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others*. The term "employee" includes contract employees performing a government function.¹ An attorney who contracts with a municipality to provide ongoing legal services as a Town Attorney is a contract employee within the meaning of the code.

A contract employee may not use his or her official position to specially benefit himself, herself or their outside business or employer. Based on the facts you have submitted, other applicants will not have the ability to meet socially, one on one, to discuss the RFQ proposal. In addition, the current Town Attorney has an added advantage of having an existing relationship with the decision making parties and has provided ongoing services giving advice to Town employees and officials. These services, by their very nature, would give added weight to such advice or opinion. Until such time as the applicants are identified, it is unknown whether the Town Attorney's law firm will respond to the RFQ. Based upon the facts you submitted, the contract is with the attorney's law firm, not with the individual attorney. Therefore, the resignation of the Town Attorney will not affect the ability of the firm to reapply.

If the Attorney, his outside business or employer, or any other person or entity enumerated in the misuse of office section, are not seeking to contract with the Town, the issue of special financial benefit is moot and the Town Attorney is not prohibited from meeting with employees or officials in the matter.

IN SUMMARY, an official or employee may not use his or her official position to obtain a financial benefit, not shared by similarly situated members of the general public, for himself or his outside business or employer. Therefore, a Town Attorney may not participate in an RFQ process for a new Town Attorney contract if he or his outside business or employer is seeking the contract, or will otherwise specially financially benefit through the process.

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

ASI/gal

¹ Article XIII, section 2-442 definitions