



Palm Beach County Commission on Ethics

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November 4, 2011

Officer James Walley
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480

Re: RQO 11-097
Gift Law/Disclosure

Dear Mr. Walley,

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 you were required to report a gift of discounted tickets to the Town of Palm Beach (the Town) Policeman's Ball, valued in excess of \$100, when the gift was motivated by your personal or social relationship to the donor rather than an attempt to obtain your goodwill or otherwise influence you in the performance of your official duties. You also asked whether the gift reporting requirement of the revised Code of Ethics, effective June 1, 2011, applied to all non-exempt gifts given during the fiscal year ending on September 30, 2011.

IN SUM, you are not required to report a gift motivated by a personal friendship or social relationship, provided the gift is not given by a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the Town, and is not otherwise given to influence the performance of your official duties. The requirement to report gifts is procedural and all municipal officials and employees, not required to report under state law, must complete and submit an annual gift disclosure report with the Palm Beach County Commission on Ethics (COE) no later than November 1, 2011, for the preceding year ending September 30, 2011. Substantive violations of the gift law involving municipal employees or officials occurring prior to June 1, 2011, cannot be prosecuted under the code, however, unless exempted, all gifts with a value in excess of \$100 received during the reporting period must be reported.

THE FACTS as we understand them are as follows:

You are a police officer with the Town of Palm Beach. In January, 2011, you attended the annual Policeman's Ball held at Mara Lago, Palm Beach. The publicly advertised ticket price was \$500. However, officers purchased tickets through the Police Chief's secretary at the discounted price of \$25 per person. The \$475 difference was paid by the Palm Beach Police Foundation (PBPF) in an attempt to make the event affordable to police officers. Many officers purchased tickets in this manner. The Town Police Department required officers who attended the event to fill out a disclosure form for the Town.

You did not purchase tickets to the event from PBPF through the Chief's secretary. On the day of the event, you were notified by another officer who had previously purchased tickets that he was unable to attend. The officer is a personal and social friend of yours and gave you his tickets. The tickets were not given to influence you in the performance of your official duties.

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

Section 2-444(f)(2)b. requires that gifts in excess of \$100, which are not otherwise excluded or prohibited pursuant to this subsection, *shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1, of each year beginning November 1, 2011, for the period ending September 30 of each year.* However, §2-444(2)a. states as follows:

Personal Gifts. All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of his or her official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained his or her office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the county or municipality as applicable, then the official or employee shall not accept a gift in excess of \$100 in accordance with subsections (a)(1) and (b)(1).

Based upon the facts you provided, the gift was given by the individual officer who could not attend the event. It was neither a pass-through from the chief's secretary nor a gift given directly by the PBPF. As such, provided your relationship with the donor officer and the facts and circumstances surrounding the gift demonstrate that the motivation for the gift was personal and social, you would not be required to report such a gift.

You also asked, on behalf of your fellow officers, whether the value of the tickets would need to be reported by those who purchased the discounted tickets in the normal course through the chief's secretary subsidized by PBPF. In most instances, action under the code of ethics is prospective, that is, a violation may not be sustained for actions occurring prior to the effective date of the code. This is true when the code affects substantive rights and liabilities.¹ Simply put, a person is not held responsible for conduct that was not prohibited at the time. For example, a person may not be held accountable under the code for accepting a prohibited gift before the code was enacted and became effective. However, the reporting requirement merely asks that non-exempt gifts be reported as of November 1, 2011, after the June enactment of the revised Code of Ethics. Substantive enforcement measures would only apply to a failure to report, not to the underlying content of the report. According to the United States Supreme Court, "A statute does not operate "retrospectively" merely because it is applied in a case

¹ Arrow Air, Inc. v. Walsh, 645 So.2d 422 (Fla. 1994)(Whistleblower statute cannot be applied retroactively, since it created a new cause of action and affected substantive rights and liabilities)

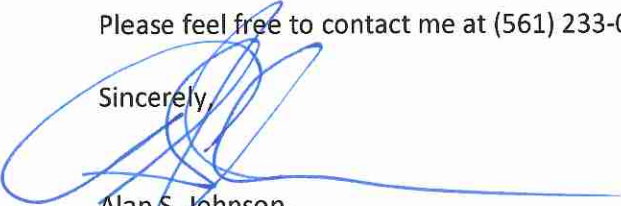
arising from conduct antedating the statute's enactment, or upsets expectations based on prior law. Rather the court must ask whether the new provision attaches new legal consequences to events completed before its enactment."² We are of the opinion that the reporting requirement is procedural in nature and does not affect the substantive rights of the reporting individual. Therefore, unless an exclusion exists, the difference in value between the ticketed price of the January, 2011, event (\$500) and the cost paid by the recipients (\$25) must be reported as required under the code.

IN SUMMARY, based on the facts you have submitted, the tickets to the Policeman's Ball that you received from a personal friend and co-worker, as described in section 2-444(f)(2)a. of the Code of Ethics, is not reportable. However, the difference in value between the public ticketed price and the amount paid by officers, obtained through the PBPF and distributed by the Chief's secretary, are reportable as gifts from PBPF. These gifts are required to be reported if made between October 1, 2010 and September 30, 2011.

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

² Landgraf v. USI Film Products, 114 S.Ct. 1483, 1499 (1994)