



Palm Beach County Commission on Ethics

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December 1, 2011

John Fenn Foster, Esq.
FOSTER & FUCHS, P.A.
Greenway Professional Center
4425 Military Trail, Suite 109
Jupiter, FL 33458

Re: RQO 11-100
Gift Law

Dear Mr. Foster:

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 30, 2011.

YOU ASKED, in your email of 11/07/2011, whether an officer/shareholder of a private law firm who serves as an attorney for a municipality may provide holiday gifts to council-members and staff of the municipality provided the gifts are valued at less than \$100, in the aggregate for the calendar year.

IN SUM, provided the gifts are not given as a *quid pro quo* for an official public action or a legal duty performed or violated by a public employee or official, and the value of the gift is not more than \$100, in the aggregate for the calendar year, the Code of Ethics does not prohibit the giving of such a gift, even if the donor is a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the employee or official's public employer.

THE FACTS as we understand them are as follows:

You are an officer/shareholder in the law firm of Foster and Fuchs, P.A. Your firm serves as the Town Attorney for the Town of Haverhill (the Town). As the attorney for the Town, you provide routine general legal services. You and your firm would like to give holiday gifts to the Town Council members and municipal staff. The gifts to each person are valued at less than \$100.

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

The Gift Law prohibits a public official or employee from knowingly accepting any gift with a value of greater than \$100 annually, in the aggregate, from someone they know, or reasonably should know is a

vendor or lobbyist of their public employer.¹ Likewise, a vendor, lobbyist, employer or principal of a lobbyist may not knowingly give any gift with a value greater than \$100, in the aggregate for the calendar year, to a person they know is a public employee or official when they do business with his or her public employer.² There is no prohibition under these sections for a vendor, lobbyist, principal or employer of a lobbyist from giving a gift of \$100 or less, in the aggregate for the calendar year.

However, no gift, regardless of value, may be given to a public official or employee, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

In other words, nothing of value may be given as a quid pro quo or in gratitude to a public employee or official in anticipation, or as a result, of an official act or duty performed or violated. This commission has previously opined as to gratuities given for the performance of a public act or legal duty.³ Such a gratuity or "thank you" gift is prohibited under the code. However, gifts of a value of \$100 or less, in the aggregate for the calendar year that are not tied to a public act or legal duty are not prohibited. We cannot opine as to any Town rules or procedures that may apply to holiday gifts.

If the value of the gift is not more than \$100, annually in the aggregate, we need not examine the relationship between your firm and the Town as vendor or contract employee.

IN SUMMARY, you are not prohibited from giving holiday gifts valued at less than \$100, in the aggregate for the calendar year, to public officials and employees, unrelated to any official act or duty on the part of the official or employee.

This opinion construes the Palm Beach County Code of Ethics and is based upon the facts and circumstances that you have submitted. It 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.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal

¹ §2-443(a)(1)

² §2-443(a)(2)

³ RQO 10-031, RQO 11-008, RQO 11-098