



# Palm Beach County Commission on Ethics

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Alan S. Johnson

November 22, 2011

Ruth C. Moguillansky  
2300 N. Jog Road, Suite 2E-48  
West Palm Beach, FL 33411-2741

Re: RQO 11-102  
Gift Law/ Valuation

Dear Ms. Moguillansky,

Your request for 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 email dated November 10, 2011, whether you are required to file a gift disclosure form with the Commission on Ethics (COE), to report your acceptance of a "sunset cruise" gift certificate valued at \$100, for which you paid \$55 in a silent auction. Additional information was obtained by COE staff via email.

IN SUM, the Code of Ethics requires public employees who are non-state reporting individuals to file an annual gift disclosure report with the Commission on Ethics if they have received a gift valued at greater than \$100 during the fiscal calendar year. Based on the information you provided, the gift certificate you received is valued at exactly \$100, and therefore would not require disclosure. Further, by paying \$55 for the gift certificate in a silent auction, the net value of the gift to you is \$45, well below the value that would trigger the Code's disclosure requirement.

THE FACTS as we understand them are as follows:

You are a Palm Beach County employee, and thus subject to the Palm Beach County Code of Ethics. On November 10, 2011, the PBC Planning, Zoning and Building department held a fundraiser event involving a "silent auction" in support of the United Way Charities. Supporters offered written "bids" for each of several donated gifts, and the highest bid was awarded the donated prize. A company known as Tropical Sailing, donated a gift certificate for a "sunset cruise" to this event which you advise was valued at \$100. You were given the gift certificate after submitting a winning bid of \$55. This gift certificate was donated by Tropical Sailing for the purpose of supporting the United Ways Charities, and not in exchange for any public act or legal duty performed by you as the final recipient of the gift.

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

### **Sec. 2-444. Gift law.**

- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, 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.

- (f) Gift reports. Any official or employee who *receives a gift in excess of one hundred dollars (\$100) shall report that gift* in accordance with this section. (Emphasis added)
- (g) For the purposes of this section, "gift" shall refer to the transfer of *anything of economic value*, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, *without adequate and lawful consideration*. (Emphasis added)

The "cash value" of the donated gift certificate is \$100. While you paid \$55 for the gift, this would not be considered to be "adequate consideration" for a gift valued at \$100. Therefore, the net value of the gift is the value of the gift (\$100) minus the consideration you paid for the gift (\$55), for a net gift value to you of \$45.<sup>1</sup> This amount is below the reporting threshold under the Code of Ethics, thus no disclosure related to this gift need be made.

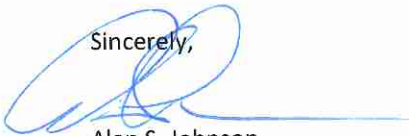
Further, because the gift certificate was distributed via a silent auction, it is unlikely that the gift was donated or accepted for any past, present or future performance of a legal duty, or as the result of any official action in violation of any of the above provisions of §2-444(e), since the donor could not have known who would be the final recipient of this gift.

IN SUMMARY, because the net value of the gift certificate you received in the charity silent auction was not greater than \$100, you are not required to file a gift disclosure form for receipt of this gift. Keep in mind that no gift of any value may be either given or accepted for any past, present or future performance of a legal duty, or as the result of any official action.

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,  
Commission on Ethics

ASJ/meb/gal

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<sup>1</sup> Section 112.3148(7), Florida Statutes, and Section 34-13.310, Florida Administrative Code, list the procedures to determine the "net value" of a gift.