



Palm Beach County Commission on Ethics

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December 1, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-103
Holiday gifts

Dear Mr. Elwell,

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 letter of November 10, 2011 whether the following was permissible under the gift law provisions of the Palm Beach County Code of Ethics;

1. May employees exchange holiday gifts?
2. May employees accept shared food items such as fruit baskets, candy or baked goods?
3. May employees accept individual holiday gifts which are placed in a pool to be randomly raffled at the end of the holiday season?
4. May Town sanitation workers accept holiday gifts of cash as a general expression of appreciation where such gifts are not tied to a specific task or trash pick-up?

IN SUM, holiday gifts of a value in excess of \$100, in the aggregate for the calendar year, may not be accepted from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to the Town.

Gifts of any value are prohibited under §2-444(e) if given for the past, present or future performance of a public act or legal duty. However, depending upon the facts and circumstances, a general holiday gift, not tied to a public act or duty, is not prohibited under the code. A blind raffle of donated gifts and conducted by the Town is not prohibited by the code, provided the donor is not a vendor or lobbyist of the Town, and there is no *quid pro quo* or other special consideration given to the donor in exchange for the donated gifts.¹

¹ RQO 11-055

A public employee or official may not solicit anything of value from a vendor or lobbyist where the gift is for his or her personal benefit, or the benefit of another official or employee, or any relative or household member of the official or employee.²

Any gift that is not otherwise prohibited or exempted by the code, of a value in excess of \$100, must be reported as required by the code. To determine the individual value of a gift of food, given to multiple employees, the total value of the gift is divided by the number of employees who share in that gift.³ Lastly, unsolicited holiday gifts to sanitation workers that are not connected to a specific official action, but rather, are given as a general expression of appreciation, are not prohibited. However, no gifts of a total value in excess of \$100, in the aggregate for the calendar year, may be accepted from a vendor or lobbyist of the Town. These gifts are subject to the gift law reporting requirements of all public employees.

THE FACTS as we understand them are as follows:

You are the town manager for the Town of Palm Beach (the Town). During the winter holiday season Town employees receive gifts from the community in the form of "small food items such as fruit baskets, boxes of candy or nuts, baked goods, etc." The Town policy is to place these items in shared public spaces such as public counters or communal break rooms, to be shared by all. Town policy prohibits employees from accepting individual holiday gifts, unless they consist of gifts exchanges among employees for items of small value.

However, individual gifts from the community, received by employees, may be accepted provided that they are immediately forwarded to the Town Manager's office to be included in a "raffle" of all such items at the end of the holiday season. Names of employees are randomly drawn to determine who receives each item. The most common type of holiday gift subject to the raffle is a bottle of wine. No gift given by a vendor or lobbyist of the Town, valued in excess of \$100, in the aggregate for the calendar year, may be accepted by an employee and placed in the raffle.

The Town does not outsource its sanitation function and maintains its own sanitation personnel. Town policy allows employees who collect garbage and yard trash "to receive holiday gifts of cash as an expression of general appreciation for everything they have done throughout the year." Such gifts may not be solicited; however, voluntary gifts are permitted by the Town as "consistent with common practice in our society to provide a holiday "thank you" to sanitation workers, postal carriers, newspaper delivery people and others who perform a recurring personal service to their customers throughout the year." Gifts may not be accepted in exchange for performing a specific task or trash pick-up.

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

Section 2-444(a)(1) prohibits an elected official or employee of government from soliciting or accepting any gifts with a value of greater than \$100, in the aggregate for the calendar year, from a person or entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor,

² §2-444(c)

³ §2-444(g)(for questions of valuation the code of ethics refers to §112.3148(7), Florida Statutes, and §34-13, Florida administrative Code)

lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to their government employer. Therefore, in no instance may an employee of the town accept such gifts.

Section 2-444(c) prohibits the solicitation of any gift from a vendor or lobbyist, if the gift is for the personal benefit of the official or employee, fellow official or employee, or the official or employee's relatives or household members.

Section 2-444(e) states as follows:

- (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.

A gift of any value may not be accepted as a *quid pro quo* for any official action, duty performed or duty violated. Gifts that are not prohibited may be accepted. In most instances, allowable gifts in excess of \$100, not given by personal friends, co-workers or relatives must be reported as required by the Code of Ethics.

Specifically, gifts exchanged between employees are not prohibited, provided there is no official *quid pro quo* involved. Holiday gifts of food that are not given to an individual employee as a "thank you" gift in exchange for a specific service, public action or legal duty performed or violated are not prohibited.⁴ In determining the value of a gift the code adopts Florida codes and statutes.⁵ For gift reporting purposes, the individual value of a gift of food is the total value divided by the number of persons sharing the gifts. If the individual share exceeds \$100, the gift must be reported by the employees.

Individual gifts from non-vendors or lobbyists can only be accepted so long as they are not given in exchange for a public act or legal duty performed by the employee. The Town requires that all individual gifts be immediately submitted to the Town Manager for inclusion in a holiday "blind raffle." Notwithstanding, regarding an individual gifts submitted for a holiday raffle, employees must take great care not to accept a prohibited gift of a value in excess of \$100, in the aggregate for the calendar year, given by a vendor or lobbyist of the Town.

Lastly, you asked whether sanitation workers who are public employees may accept general holiday gifts of cash from residents of the Town. First, they may not accept a gift of a value greater than \$100, in the aggregate for the calendar year, from a vendor or lobbyist of the Town. In addition, as previously stated, no employee may accept a gift of any value in exchange for the past, present or future performance of an official act or legal duty. The next question then becomes whether a holiday gift is given in exchange for such a public action or duty, performed or to be performed. Previously, this commission interpreted §2-444(e) not to apply to wait staff or municipal golf personnel where tips and

⁴ Tips in exchange for an official act are generally prohibited. See, RQO 10-031, RQO 11-008, RQO 11-082

⁵ §112.3148(7), Florida Statutes, §34-13.310, Florida Administrative Code, RQO 11-022, RQO 11-047

gratuities were contemplated in the public employee's compensation package.⁶ The COE noted that such arrangements also reflected standard practices within the service industry. Similarly, holiday gifts of a voluntary nature are not uncommon in regard to regular home service providers. This standard does not run afoul of the code as long as the holiday gift is not in exchange for a specific act, or given in anticipation of future action.

IN SUMMARY, gifts of a value in excess of \$100, in the aggregate for the calendar year, may not be accepted from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to the Town. Therefore, the total allowable gifts that may be given by a vendor or lobbyist may not exceed \$100 during the course of an entire calendar year. No official or employee may knowingly solicit anything of value from a vendor or lobbyist where the gift is for his or her benefit, the benefit of a relative or household member, or the benefit of a fellow official or employee.

Gifts exchanged between employees are not prohibited, provided there is no official quid pro quo involved.

Gifts of food or other items received from residents of the town during the holiday season cannot be accepted if given because of the past, present or future performance of a public act or legal duty. Gifts donated to the town and distributed via a "blind raffle" are not prohibited, provided the gift is not given by a vendor or lobbyist if valued in excess of \$100, in the aggregate for the calendar year.

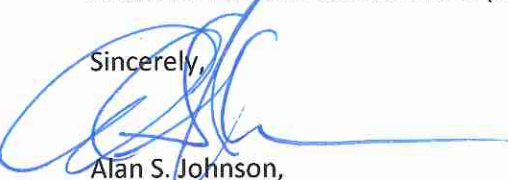
A holiday gift of cash to sanitation employees is not prohibited provided it is not given in exchange for the past, present or future performance of an official act or a legal duty.

Lastly, a gift that is not otherwise prohibited or exempted under the code must be reported if valued in excess of \$100. The value of gifts of food is determined by the total value of the gift divided by the number of employees who share in the gift.

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

⁶ RQO 11-028 ("allowing gratuities as part of the compensation package for Country Club employees is grounded in a reasonable interpretation of what constitutes an "official public action" or "legal duty" on the part of a public employee under these circumstances")