



Palm Beach County Commission on Ethics

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January 5, 2011

Janet Whipple, Town Clerk
Town of South Palm Beach
3577 S. Ocean Blvd.
South Palm Beach, FL 33480

Re: RQO 11-104
Gift Law/Charitable Organization

Dear Ms. Whipple,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion on November 30, 2011 and again on January 4, 2012 and rendered its opinion at a public meeting held on January 4, 2011.

YOU ASKED in your email dated November 14, 2011, what the procedures are to be followed under the Code of Ethics for holding a silent auction fundraiser for the PBC Municipal Clerk's Association (MCA), to raise funds to be used for the continued professional education of municipal clerks throughout Palm Beach County.

IN SUM, the professional certifications derived from funds solicited by and for individual members of MCA are for the personal benefit of each member who receives them. Therefore, any funds solicited by a public employee or any other person or business entity on his or her behalf, from vendors, lobbyists, principals or employers of lobbyists who lobby, sell or lease to any of the MCA members' government employers are prohibited gifts under the Code of Ethics.

Additionally, while gifts from non vendors or lobbyists are not prohibited by the code, county and municipal officials and employees are prohibited from soliciting or accepting donations of any value from any person or entity because of the past, present or future performance of an official act or a legal duty. Unsolicited gifts from vendors or lobbyists may not exceed \$100 annually in the aggregate. Lastly, if the individual benefit of an allowable gift exceeds \$100, it must be reported as required under the code.

THE FACTS as we understand them are as follows:

You are the Town Clerk and Assistant to the Town manager for the Town of South Palm Beach. You are also the President of the Palm Beach County Municipal Clerk's Association (MCA), a Florida incorporated non-profit professional association. This association is dedicated to the education and professional recognition of Municipal Clerks throughout Palm Beach County. While you are a non-profit organization, you are not a non-profit "charitable" organization as recognized by the Internal Revenue Code.

Due to a lack of available training and education funding for municipal clerks in recent years, your organization has decided raise additional funds for this purpose. Specifically, you intend to raise funds to

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assist in your stated goal that all municipal clerks in Palm Beach County attain certain professional certifications. To this end, MCA is planning to hold a "silent auction" event, and will be using association members to solicit items for this auction. Since you wish to solicit donations for your event, you have asked the COE staff to assist MCA by advising you of the requirements and prohibitions contained within the Code of Ethics related to holding such a fund raising event so as not to violate the Code of Ethics.

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

Sec. 2-444. Gift law.

- (a)(1) No...employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year, from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (c) No ... *employee, or any other person or business entity on his or her behalf*, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. (Emphasis added)
- (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.
- (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)
- (h) Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization.
 - (1) Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a *non-profit charitable organization, as defined under the Internal Revenue Code*, is permissible... (Emphasis added)

In your letter explaining your proposed procedures for such solicitation, you list the procedures outlined within the Code of Ethics under §2-444(h)(1,2&3), *Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization*. However, this provision is not applicable to the solicitations by municipal employees on behalf of MCA as you described, because while MCA is a non-profit professional association it is not a "charitable" organization as defined under the Internal Revenue Code. Therefore, you may not accept a donation valued at more than \$100 from any municipal lobbyist or vendor.

No donation of any value may be given to or accepted by your organization from *any* person or entity based on the past, present or future performance of a legal duty, or as the result of any official action.

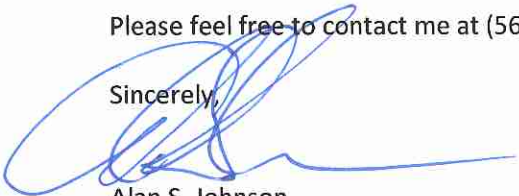
Lastly, the COE cannot opine as to the policies and rules of individual municipalities as they relate to solicitation of funds for this event from any non-vendor or lobbyist while on duty under the circumstances you describe.

IN SUMMARY, under the Code of Ethics, an employee of the county or any municipality within Palm Beach County, *or any other person or business entity on his or her behalf*, is prohibited from soliciting or accepting anything of value from a person or entity that the recipient knows is a vendor or lobbyist of the county or a municipality, for their personal benefit, the benefit of a relative or another public employee. They are further prohibited from soliciting a gift of any value from any person or entity, based on the past, present or future performance or non-performance of an official act or a legal duty. Lastly, even if unsolicited, a gift may not be accepted from a vendor or lobbyist if the value exceeds \$100, annually in the aggregate.

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