



Palm Beach County Commission on Ethics

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December 1, 2011

Leonard G. Rubin, Esquire
Town Attorney, Town of Juno Beach
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407-1950

Re: RQO 11-105
Voting Conflicts

Dear Mr. Rubin,

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

YOU ASKED in your letter dated November 15, 2011, whether the Seacoast Utility Authority (SAU), which employs Juno Beach Town Council Member John Callaghan as an engineer, is considered an "outside employer" under the Code of Ethics. You further asked, if it is determined that SUA is Mr. Callaghan's "outside employer," under what circumstances would his participation in Water Resources Task Force (WRTF) matters result in a prohibited special financial benefit to SUA.

IN SUM, the Code of Ethics limits the definition of an "outside employer or business" by excluding any county, state, federal, regional, local, or municipal government entity. Therefore, the voting and participation restrictions involving outside employment conflicts that would normally apply to a member or alternate member of WRTF do not apply if the outside employer is another governmental entity.

THE FACTS as we understand them are as follows:

You are the Town Attorney for the Town of Juno Beach. You have asked for this advisory opinion on behalf of John Callaghan, an elected member of the Juno Beach Town Council, who is employed as an engineer by the Seacoast Utility Authority (SUA). SUA is a governmental regional water and wastewater utility that was formed under an interlocal agreement between five local governments, Palm Beach County, the City of Palm Beach Gardens, the Village of North Palm Beach, the Town of Lake Park and the Town of Juno Beach. According to their website (www.sua.com), SUA provides potable water and wastewater services to thousands of residential and commercial customers within these five (5) localities.

Because of his professional expertise, the Palm Beach County League of Cities (LOC) has asked Mr. Callaghan to serve as an alternate member of the Palm Beach County Water Resources Task Force (WRTF). The appointed position must be held by a municipal elected official and Mr. Callaghan qualifies as an official of Juno Beach. WRTF is an advisory board and "was created by resolution of the Palm

Beach County Board of County Commissioners (BCC), to identify and evaluate opportunities and impediments to providing future water supply, conservation, wastewater treatment, and reuse or reclaim water opportunities in the most efficient and cost effective manner practicable.”¹ WRTF was created by the BCC by resolution on April 20, 2010.² The language of this resolution allows the LOC to appoint six (6) members, and six (6) alternates to WRTF.

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

Sec. 2-442. Definitions.

Advisory board shall mean any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.

WTRF is an advisory board that was created by the BCC. If he were to accept the LOC appointment as an alternate member, Mr. Callaghan would be an advisory board member under the Code of Ethics.

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. (Emphasis added)

SUA is a non-profit governmental regional water and wastewater utility. You correctly point out in your letter that as a “regional governmental entity,” SUA is excluded from the definition of “outside employer” under the Code.

Section 2-443(c), *Disclosure of voting conflicts*, requires that county and municipal *officials* abstain from voting and not participate in any matter that will result in a “special financial benefit” for any person or entity listed in §2-443(a)(1-7), which includes any “outside employer” of that official. However, while Mr. Callaghan is an elected Juno Beach Council Member, for purposes of membership on the WRTF, he would merely be appointed as an LOC representative. An “official” is defined, in part, as someone who is elected to a governing body or appointed by a local governing body. Therefore, Mr. Callaghan is an “official” only as regards his status as an elected member of the Juno Beach Town Council. Whether the voting prohibitions and other requirements under §2-443(c) are binding on advisory board members who are *not* appointed by a governing body, mayor, or chief executive, is an issue that need not be determined in this opinion, since SUA is excluded from the definition of “outside employer” by virtue of it being a regional governmental entity.

This analysis is limited to Mr. Callaghan’s proposed role as a member of WRTF, and may not be applicable in every circumstance in his role as a Juno Beach Town Council Member.

IN SUMMARY, under the plain language of the Code of Ethics, where a county or municipal official or employee has an outside employer that is a federal, regional, local, or municipal government entity,

¹ WRTF website, (www.pbcgov.com/wrtf)

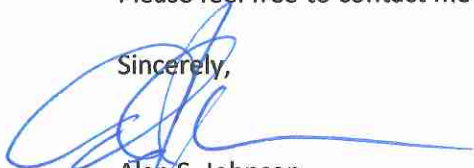
² BCC Resolution R-2010-0660

such employment will not be considered to be an "outside employer" for the purposes of disclosure, or voting conflict prohibitions within the Code.

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