



Palm Beach County Commission on Ethics

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December 16, 2011

Mr. Carl Erickson
Palm Beach County Information Systems Services
301 N. Olive Avenue
West Palm Beach, FL 33401

Re: RQO 11-106
Accepting travel expenses

Dear Mr. Erickson,

Your request for advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your email of September 28, 2011, which was forwarded to the Commission on Ethics' staff on November 21, 2011, whether you, or other ISS employees, were prohibited by the Code of Ethics from accepting a tuition waiver for a future training class provided by IBM (a vendor of the County). The tuition waiver was offered in return for your assisting them in a product evaluation survey. You provided additional information to COE staff via email and telephone.

IN SUM, the Code of Ethics prohibits you from accepting employment related travel expenses (which includes registration fees, travel and meals) from any vendor of the county without a waiver from the governing board, in this case the Board of County Commissioners (BCC). Because IBM is a vendor of the county, in order to accept this fee waiver, the BCC must waive the requirements of this section of the code by majority vote. Further, other than properly waived travel expenses, you may not accept any gift in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist, who sells, leases to, or lobbies Palm Beach County.

THE FACTS as we understand them are as follows:

You are a Palm Beach County employee working for the Information Systems Services Department (ISS). In January 2011, ISS purchased server hardware from IBM. This purchase included a complementary assessment service from IBM called "PowerCare Assessment." ISS used this service to assess the servers they purchased in January. After the assessment was completed, IBM asked that this service be evaluated via a survey, which you completed. As a reward for completing this evaluation, IBM offered ISS a fee waiver for you, or any ISS employee, to attend an "IBM Power Systems Conference," (IBM Conference) which normally costs \$2,495. The IBM Conference is educational. You were going to attend such a conference in Miami from October 10-14, 2011, but decided not to attend until you were sure acceptance of this fee waiver was not prohibited under the code. You or another employee may attend a future conference, if permitted.

According to a copy of the IBM fee waiver offer sheet you forwarded to COE staff, the waiver includes conference fees, materials, admission to the "Solutions Center Reception" and breakfast and lunch for each day (also included for all paid attendees). It does not include airfare, lodging or other hotel costs, incidentals, or any meals outside of those provided by the conference. This fee waiver may be used by any ISS employee at a future "Power Systems Conference."

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THE LEGAL BASIS for this opinion relies on the following section of the Palm Beach County Code of Ethics.

Section 2-443. Prohibited Conduct.

- (f) *Accepting travel expenses.* No official or employee shall accept, *directly or indirectly*, any travel expenses including, but not limited to, transportation, lodging, meals, *registration fees* and incidentals from any county or municipal contractor, *vendor*, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable *may waive the requirements* of this subsection by a majority vote of the board or local municipal governing body. (Emphasis added)

Section 2-444(a) prohibits a public employee from soliciting or accepting a gift valued in excess of \$100 from a vendor or lobbyist of his or her government. Conversely, vendors and lobbyists are prohibited from giving such a gift to someone they know is a public employee. However, §2-444(g)(1)h. specifically excludes registration fees and other related costs associated with educational conferences from the definition of a gift, provided a waiver is obtained pursuant to §2-443(f).

Section 2-444(g) defines a gift as the transfer of anything of economic value without adequate and lawful consideration. Section 2-444(g)(1) lists a number of exceptions to the application of this definition as follows:

The provisions of subsection (g) shall not apply to:

(g)(1)h. Registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses either properly waived or inapplicable pursuant to section 2-443(f), provided that attendance is for governmental purposes, and attendance is related to their duties and responsibilities as an official or employee of the county or municipality.

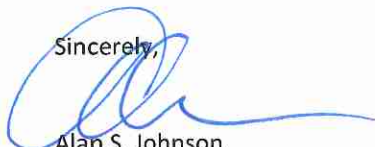
In order to accept and use the IBM fee waiver for any of its employees to attend a future IBM conference, the requirements of §2-443(f) must first be waived by a majority vote of the BCC at an open meeting. The waiver process serves to make the transaction transparent. However, notwithstanding a waiver, a public employee may not accept other items from a vendor that are not related to conference travel expenses as set forth in §2-443(f) if the value exceeds \$100.

IN SUMMARY, ISS employees are not prohibited by the Code of Ethics from attendance at any educational training conference where the travel expenses are paid for by a county vendor, provided that they obtain a waiver from the Board of County Commissioners. ISS employees are also prohibited from accepting anything of value in excess of \$100, other than the related travel expenses, from a vendor/lobbyist of the county.

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 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal/meb