

Palm Beach County Commission on Ethics

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Alan S. Johnson

December 1, 2011

Mo Thornton, City Manager
City of Atlantis
260 Orange Tree Drive
Atlantis, FL 33462

Re: RQO 11-110
Gift Law

Dear Ms. Thornton,

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

YOU ASKED in your email dated November 22, 2011, whether it violates the Palm Beach County Code of Ethics for the City of Atlantis (the City) to solicit monetary donations from residents of the City for "The Employee Holiday Fund," where these funds are later distributed equally to each employee of the City. Further information was obtained by COE staff through follow-up communications with you.

IN SUM, the Code of Ethics does not prohibit the distribution of funds donated by residents of the City to its employees as a holiday gift, providing that no funds are solicited or accepted into this fund from any vendor or lobbyist of the City, and the distribution to employees is based on the worker's status as employees of the City, and not on the past, present or future performance of a legal duty, or as the result of any official action performed by the City or any employee. Further, if the amount distributed to each employee is greater than \$100, they must report acceptance of such a gift to the Commission on Ethics as required by the Code.

THE FACTS as we understand them are as follows:

For over twenty years, the City of Atlantis (the City) has solicited and collected monetary donations from its residents during the holiday season for "The Employee Holiday Fund." These funds are then equally divided among the employees of the City as a holiday gift from its residents. Historically, these funds are solicited from residents by the Mayor on a voluntary basis. Recently, the solicitations have been made using the City's newsletter, "The City News." This newsletter makes clear that donations are voluntary, and that all funds collected are equally divided among all City employees. You advised in your communications with staff that generally, each employee would receive more than \$100 from this fund each holiday season, although the exact amount is not known until donations are cut-off, and the distribution is made to the employees.

Until distributed, these funds are kept in a separate bank account set up by City administration for this purpose. At this point, all residents of the City have been encouraged to donate to the fund, without regard to whether they are vendors or lobbyists of the City. You are aware that the Code of Ethics may require certain changes in donation policy, in particular as it applies to City vendors and lobbyists, but the City would like to keep the program in place.

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

2633 Vista Parkway, West Palm Beach, FL 33411 561.233.0724 FAX: 561.233.0735

Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com

Website: palmbeachcountyethics.com

Section 2-444(a)(1) of the Code of Ethics, prohibits municipal employees from accepting, directly or indirectly, gifts valued at more than \$100, annually in the aggregate, from any City vendor or lobbyist. Section 2-444(a)(2) prohibits City vendors and lobbyists, or employers or principals of lobbyists from giving these prohibited gifts to persons they know are City officials or employees.

Section 2-444(c) prohibits an employee or elected official, or anyone on his or her behalf, from soliciting a gift of any value from a vendor or lobbyist of the City, 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.*

Section 2-444(e) prohibits *any person or entity* from offering, giving or agreeing to give a gift of any value to any county or municipal official or employee, as well as prohibiting any official or employee from accepting or agreeing to accept a gift of any value, because of the performance or non-performance of an official act or legal duty.

Section 2-444(f), Gift reports, requires any official or employee who *receives a gift in excess of one hundred dollars (\$100)* to report that gift in accordance with the disclosure requirements of the Code.

And finally, Section 2-444(g), defines a gift as, "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 Gift law portion of the Code of Ethics curtails undue influence that gifts may exert on local government officials and employees in three ways.

1. The code prohibits gifts valued at greater than \$100, annually in the aggregate, from being given to officials or employees by vendors or lobbyists of those governments; and,
2. The code prohibits the solicitation of anything of value from lobbyists or vendors, for the personal benefit of any elected official or employee, and;
3. The code requires allowable gift transactions over \$100 to be transparent by requiring disclosure of these gifts.

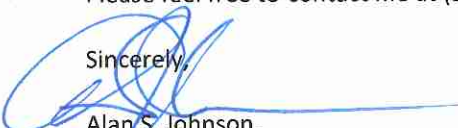
Under the facts as you have stated to COE staff, these disbursements to City employees are not prohibited gifts provided the donations are neither solicited nor accepted from vendors or lobbyists of the City. If the value of the disbursed gifts exceeds \$100 they must be reported in a manner as required by the code.

IN SUMMARY, providing that donations to "The Employee Holiday Fund" are not solicited or accepted from any City vendor, or any lobbyist, or employer or principal of any lobbyist that lobbies the City, and the disbursement of such donations to employees is not based on any official act or legal duty taken or to be taken, the Code of Ethics does not prohibit residents of the City of Atlantis from donating to this Fund, or the distribution of collected donations to employees of the City as a holiday 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/meb/gal