



# Palm Beach County Commission on Ethics

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Alan S. Johnson

January 6, 2012

Chief Christopher Yannuzzi  
Ocean Ridge Police Department  
6450 North Ocean Blvd.  
Ocean Ridge, FL 33435

Re: RQO 11-111  
Holiday gifts

Dear Chief Yannuzzi,

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 January 4, 2011.

YOU ASKED in your letter of December 3, 2011 whether members of the Ocean Ridge Police Department may accept a \$50 gift card from a Town resident, who does not vend, lease or lobby the Town, as a holiday gift.

IN SUM, 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, nor may anything of value be solicited by a public employee from a vendor or lobbyist if it is for the employee's benefit, the benefit of a relative or fellow employee. However, depending upon the facts and circumstances, a general holiday gift, not otherwise tied to a public act or duty, is not prohibited under 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.<sup>1</sup>

THE FACTS as we understand them are as follows:

You are the Chief of Police of the Ocean Ridge Police Department. Robert Merkel, a resident of Ocean Ridge, provides all police officers and dispatchers with a \$50 debit card as a holiday gift. He has done so for the past several years and has chosen to do so because of his father's service as a police officer. The gift cards are not solicited by the police department or individual employees, but are provided as an expression of appreciation. The cards are individually addressed to each staff member based on a list provided by the Police Department in response to the donor's request. They are given indiscriminately based upon this list and are processed by Mr. Merkle's wife's secretary. The items are then delivered in bulk to the Police Department and distributed through interoffice mail. Mr. Merkle is not a vendor or lobbyist of the Town and these gifts are given as an expression of appreciation for the department's service. Gift cards are provided to Police department staff only, but to all Police department personnel including officers, dispatchers and clerks. You stated during the public meeting that you have institutional controls in place to monitor that no improper *quid pro quo* takes place, and both you and Mr. Merkle stated that Mr. Merkle has received no

<sup>1</sup> RQO 11-055

special benefit in the past (and you will monitor to confirm he does not receive such a benefit in the future) based upon the delivery of the gift cards.

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

Section-443 (a)

(a) *Misuse of public officer or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

- (1) Himself or herself

Section 2-444(e)

(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 public employee or official may not use their official position to give themselves a special financial benefit. In addition, a public employee may not accept gifts valued in excess of \$100, in the aggregate for the calendar year, from vendors or lobbyists of his or her public employer.<sup>2</sup> Nor may an employee solicit anything of value from a vendor or lobbyist for his or her personal benefit, the benefit of a relative or household member, or another employee.<sup>3</sup> Similarly, 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 a specific act, or given in anticipation of future action.

THE RATIONALE for regulating gifts to public employees is grounded in the desire to increase transparency and accountability and to remove the appearance that gifts are made to obtain access or engender the good will of those employees. Because the official acts of police officers are of a discretionary nature and the officers have the power and authority to sanction or detain citizens under the law, gifts such as these may create an appearance of impropriety. Therefore, municipalities may have policy and procedural rules banning such gifts. While holiday gifts such as these may not be prohibited under the code, officers and department personnel must take great care to not take an official action, or perform, fail to perform or violate a legal duty because of a gift accepted by them or on their behalf.<sup>4</sup>

Provided these gifts are not solicited, or given in exchange for the performance or non-performance of a specific official act or legal duty, or given in anticipation of future action, members of your department are not prohibited from accepting a \$50 gift card from a resident of the town, whether given in July or December. Department personnel may not accept gifts valued in excess of \$100, in the aggregate for the calendar year, from a vendor or lobbyist of the Town. 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. This standard

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<sup>2</sup> §2-444(a)

<sup>3</sup> §2-444(c)

<sup>4</sup> For example, a Town police officer may not take an action during a traffic stop based upon his or her knowledge that this resident historically, has provided the department with a Holiday gift.

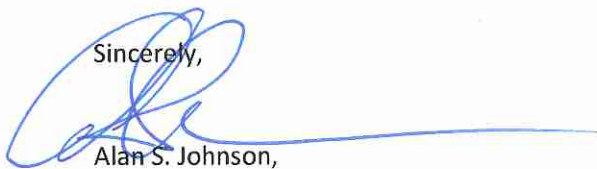
does not run afoul of the code as long as the holiday gift is not in exchange for a specific act, or given in anticipation of future action.<sup>5</sup>

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. 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. A holiday gift of gift cards to all police department 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.

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/mcr/gal

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<sup>5</sup> RQO 11-103 (depending upon the facts and circumstances presented, a general holiday gift, not tied to a public act or duty, is not prohibited under the code).