



Palm Beach County Commission on Ethics

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January 5, 2012

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

Re: RQO 11-112
Misuse of Office/Gift Law

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, 2012.

YOU ASKED in your email dated December 3, 2011, whether an Officer and Director of the Ocean Ridge Department of Public Safety Support Group (Support Group), a 501(c)3 organization, who is also an employee of the Ocean Ridge Police Department (ORPD), may solicit donations from the residents of Ocean Ridge for the benefit of the ORPD and its employees and if so, in what manner may they solicit such donations.

IN SUM, as a Town employee you are prohibited from using your official position as the Police Chief to give a special financial benefit, not shared with similarly situated charitable organizations in the community, to a non-profit organization of which you are an officer or director. Lending your name and official title to a fundraising effort would per se constitute using your employment to specially financially benefit the Support Group. Therefore, in order to use your official title to solicit donations on behalf of the Support Group, you would need to resign your position with the charity. In the alternative, should you remain as an officer or director, any solicitation would need to be in your name without any reference to your public title, including in the organization's letterhead.

In addition, because ORPD employees stand to receive a personal financial benefit from the Support Group, you may not solicit a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the Town. This would apply directly to you, as well as anyone indirectly soliciting on your behalf.¹

THE FACTS as we understand them are as follows:

You are the Police Chief for the Town of Ocean Ridge (the Town) and as the Chief of Police you serve as the Director of the Ocean Ridge Department of Public Safety Support Group (the Support Group). The Support Group solicits donations from Town residents annually for uniform and equipment maintenance (cleaning reimbursements), an annual picnic for all Town employees and their families, retirement parties and gifts, and condolence gifts. In particular, the cleaning reimbursement is provided to all uniformed Town employees including maintenance personnel and it is used to reimburse the expense to the employee associated with cleaning and maintaining issued uniforms and equipment. Your department has tried to have this included in the public budget,

¹ RQO 11-056, RQO 11-081 (charitable fundraising involving scholarships to children of public employees)

however the Town has not done so. The amount of each reimbursement is primarily based on what it would generally cost to have "x" number of uniforms commercially cleaned multiplied by the number of work days in a year. On average Police Officers can receive up to \$840, Reserve Police Officers: \$300, Dispatcher/Clerks: \$599, Maintenance: Full-time -\$599 and Part-time - \$300.

In addition the Support Group funds training and equipment purchases for the department and the entire volunteer Reserve Officer Program. While cleaning reimbursements are provided directly to the officer, all training and equipment spending and decisions are made by the Police Department and all scheduling is done based on the needs of the Police Department. The support Group funds training opportunities that are outside those budgeted by the Town for employees.

The Support Group's membership includes all fulltime and reserve police officers and police dispatchers. In addition, there are non-police members; some of whom are employees of the Town. Currently the board consists of a reserve police officer, two fulltime police sergeants, yourself and a fulltime police dispatcher. The Support Group by-laws dictate that the sitting Chief of Police will serve as Director to the Support Group.

THE LEGAL BASIS for the commission's opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Sec. 2-443(a) Misuse of public office 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;

(7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

No employee or official may use their official position or title to obtain a special financial benefit for themselves, or a non-profit organization if they serve as an officer or director of the non-profit.² A financial benefit is defined as anything of value.³ Here, the fundraising performed by ORPD employees on behalf of the Support Group raises money in part for the officer and employee's personal financial benefit. Accordingly, lending your name and official title anywhere in the solicitation to fundraise on behalf of Support Group would constitute using your position to specially financially benefit yourself and the non-profit you serve as a director, resulting in a violation of the misuse of office section of the code.⁴ This prohibition applies even though you serve on the Support Group as a result of your public employment.

Section 2-444(c) states as follows:

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)

While the Code of Ethics ordinarily would allow a public employee to solicit or accept donations on behalf of a charitable organization provided vendor and lobbyist donations in excess of \$100 are recorded on a log and filed

² RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

³ §2-442 *Financial Benefit* includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value...

⁴ RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form of financial benefit from a non-profit organization they may not use their official title to specially financially benefit that charity)

with the COE⁵, the code prohibits such solicitation from vendors or lobbyists if the gift will benefit *any* Town public employee.⁶ Accordingly, solicitation of funds used for uniform cleaning reimbursements, the annual employee picnic, retirement gifts and condolence gifts from vendors or lobbyists of the Town would be prohibited.⁷

Based upon the information you provided, the cleaning reimbursements will always exceed \$100. As something of value, not subject to a gift exception, employees who receive reimbursements from non-vendor/lobbyist sources must report these amounts on their annual gift reporting form.

THE RATIONALE for limiting solicitation of donations by employees and officials from lobbyists and vendors of their public employer is grounded in the desire to avoid the appearance of obtaining a financial benefit through one's official position. As for gifts that do not involve lobbyists or vendors, general reporting requirements and other limitations serve to increase transparency and remove the appearance that donations are made to influence official decisions or improperly obtain access to public employees or officials.

However, §2-444(g)(1)e. creates an exception to the gift law for *gifts solicited or accepted by municipal officials or employees on behalf of the municipality in performance of their official duties for use solely by the municipality for a public purpose*. Therefore, regarding solicitation for training and equipment funds, Town employees are not prohibited from soliciting vendors or lobbyists for a public purpose, as provided by §2-444(g)(1)e, so long as those donations are specifically solicited and earmarked for the operational needs of the ORPD.⁸

Section 2-444(e) states as follows:

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.*

Gifts may not be solicited or accepted because of the past, present or future performance of a legal duty or official action. Therefore, employees must take great care to ensure that there is no future expectation or present quid pro quo contemplated because of the funds provided by the Support Group, or because of donations made to the group by individual donors.

IN SUMMARY, based on the information that you have provided, ORPD employees who serve as officers or directors of the Support Group may not use their official position in any way, including official title on the organization's letterhead, to give a special financial benefit to the charity not available to similarly situated charities in the community. As an officer or director of a charity, using both your name *and official title* to solicit donations on behalf of the Support Group would constitute a violation of the misuse of office section of the code.

Except for donations specifically earmarked to the ORPD solely for a public purpose, such as the purchase of equipment or training, employees may not solicit donations on behalf of the Support Group from vendors or lobbyists of the Town of Ocean Ridge as these solicited donations would financially benefit themselves or other employees. Nor may they solicit or accept any donation as a quid pro quo or other exchange for the past, present or future performance of an official act or a legal duty.

⁵ §2-444(h)(2)

⁶ §2-444(c)

⁷ Compare RQO 11-053 (public employee may accept a gift for outstanding performance or length of service donated by an independent civic organization as an award for civic or professional achievement as compared to here where a retirement gift would be solicited by a non-profit entity created by employees for the benefit of their fellow employees).

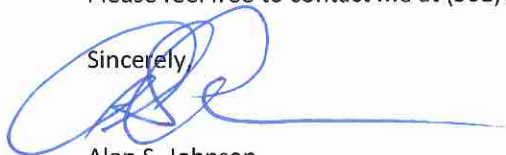
⁸ See RQO 11-056 (PD employees permitted to solicit funds for a Police foundation where the funds are specifically earmarked for purchase of police equipment) also, see RQO 10-027, RQO 10-040.

Any personal assistance provided by the Support Group to ORPD employees, including cleaning reimbursements and retirement gifts, in excess of \$100 must be reported on an employee's annual gift reporting form.

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