



Palm Beach County Commission on Ethics

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December 15, 2011

Gary Brandenburg, Esq.
Brandenburg & Associates, P.A.
11891 U.S. Highway One, Suite 100
North Palm Beach, FL 33408

Re: RQO 11-114
Gift law

Dear Mr. Brandenburg,

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 December 6, 2011, whether employees of the City of Pahokee may solicit donations from vendors or residents of the City, to establish a fund to purchase gift cards, which would then be distributed to "the elderly that are in need." Additional information was obtained by COE staff via email.

IN SUM, under the circumstances you describe, employees of the City of Pahokee (the City) may not solicit donations valued at greater than \$100 from vendors of the City, or from lobbyists or principals or employers of lobbyists that lobby Pahokee, for the purpose of obtaining gift cards to distribute to elderly residents in need. The code does not prohibit employees from soliciting donations of any amount from any person or entity that is not a City vendor, lobbyist, principal or employer of a lobbyist for the stated purpose. However, no solicitation may be made, or donation accepted from any person or entity based on any official *quid pro quo* or the past, present or future performance or non-performance of any of any public action or legal duty.

THE FACTS as we understand them are as follows:

You are the City Attorney for the City of Pahokee (the City). The employees of the City wish to solicit donations from vendors and residents of the City to purchase gift cards, which would then be distributed to elderly persons who are in need. This action is not part of any charitable group, or through a 501(c)(3) charitable organization. The City Council supports this effort, but has taken no formal action which would allow the funds to be taken into the City revenue stream and distributed as a City expenditure. No funds are allowed to be solicited or accepted based on any improper *quid pro quo*, or based on any past, present or future performance or non-performance of any public action or legal duty by the City or its employees. The employees and City staff would determine eligibility for distribution of the gift cards.

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

Section 2-444. *Gift law.*

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient

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knows, or should know with the exercise of reasonable care, *is a vendor*, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable. (Emphasis added)

This section does not allow solicitation or acceptance of a donation valued at more than \$100 from any vendor of the City, even where the donation is earmarked for distribution for a charitable reason as described under the facts you presented.

While not applicable to your situation, §2-444(h) provides an exception to this rule for a non-profit charitable organization, as defined under the Internal Revenue Code, so long as the solicitation and acceptance is properly logged and timely submitted to the COE, and no on-duty municipal staff or any municipal resources are used in this effort. Based upon the facts submitted, the fundraising is not part of any charitable organization recognized under the IRS code, therefore, this exception does not apply.

Further, since the City Council supports this effort, but has not adopted it as a "public purpose" and arranged to have the donations taken into the City revenue stream and distributed from the City funds by vote of the City Council, these donations would not meet the requirements of a gift exception under §2-444(g)(1)(e), as *gifts solicited or accepted on behalf of the county or municipal government in performance of their official duties and for use solely for a public purpose.*¹

IN SUMMARY, employees of the City of Pahokee are not prohibited from soliciting donations to purchase gift cards for distribution to elderly persons in need, so long as no donation of more than \$100 is solicited or accepted from a City vendor, or from a lobbyist, principal or employer of a lobbyist that lobbies the City. In addition, donations of any kind, from any person or entity, may not be solicited or accepted by an employee if based on a *quid pro quo* or the past, present or future performance or non-performance of any public act or 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 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal/meb

¹ Please refer to RQO 11-084 and RQO 10-040 for further information on the "public purpose" exception.