



Palm Beach County Commission on Ethics

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January 5, 2012

Lori LaVerriere, City Manager
City of Boynton Beach
100 E. Boynton Beach Boulevard
P. O. Box 310
Boynton Beach, FL 33425

Re: RQO 11-115
Misuse of Office/Gift Law

Dear Ms. LaVerriere,

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 6, whether serving on the board of directors of the Schoolhouse Children's Museum and Learning Centre (the Centre) created a conflict of interest with your service to the City of Boynton Beach (the City), and additionally, whether you could continue to fundraise on behalf of the Museum.

IN SUM, as a City employee you are prohibited from using your official position as City Manager 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 public office to specially financially benefit the Centre. Therefore, in order to use your official title to solicit donations on behalf of the Centre, you would need to resign your director position with the charity. In the alternative, should you remain as an officer or director, participation in fundraising would need to be in your name without reference to your public title. This would apply directly to you, as well as anyone indirectly soliciting on your behalf.

Insofar as the gift law is concerned, provided you are not an officer or director of the charity, you are not prohibited from using your official title in soliciting or accepting donations on behalf of Centre. If you solicit donations, directly or indirectly, in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the City of Boynton Beach, you (or the charity if solicitations are made in your name) must maintain a record of the solicitations from City vendors, lobbyists, principals or employers of lobbyists, and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event is held, within 30 days of the solicitation.

THE FACTS as we understand them are as follows:

The Schoolhouse Children's' Museum and Learning Centre (the Centre) is a non-profit charitable organization, as defined under the Internal Revenue Code.

You are the interim City Manager for the City of Boynton Beach. In 2010, the City of Boynton Beach and the Centre entered into a management agreement providing for joint maintenance and operation of the 1913 Schoolhouse Museum in Boynton Beach. Under this agreement the City provides the building, utilities, maintenance, and insurance to the Centre and the Centre is responsible for funding and operation of the Centre, including exhibits, designs, programs, hours of operation, schedule of events, publicity, advertising and fund raising. The City provides salaries and benefits to any city employees the city assigns to the Centre as well as support funds in an amount that has yet to be determined for the coming year. Historically, the City has provided the Centre with approximately \$200,000 per year.

In addition, this agreement requires the Centre to appoint the City Library Director and the City Manager to serve on its Board of Directors as permanent voting members of the Board of Directors and the Board Executive Committee.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics, which took effect June 1, 2011.

Misuse of Office

Sec. 2-443 Prohibited Conduct

(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:

(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.

As an employee of City of Boynton Beach, you may not use your official position to give "*a special financial benefit, not shared with similarly situated members of the general public*" to a non-profit organization of which you are an officer or director.¹ A financial benefit is defined as anything of value.² Moreover, as an officer or director of a charitable organization, lending your name and official title to fundraise for that charity would *per se* constitute using your position to specially financially benefit the Centre, to the exclusion of all other similarly situated charitable organizations, resulting in a violation of the misuse of office section of the code.³ In order to solicit for the Centre, you would need to do so solely in your personal and not your official capacity or title.

¹ 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)

² §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...

³ 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)

Gift Law: Solicitations on behalf of the Centre

Under the gift law provisions, §2-444(a) prohibits a public employee from soliciting or accepting more than \$100 from a *vendor or lobbyist* who sells, leases or lobbies their government employer. The revised Code of Ethics provides an exception to this prohibition to allow participation by officials and employees in charitable fundraising.⁴ This exception requires that fundraisers maintain a log of all solicitations and donations in excess of \$100 from *vendors or lobbyists* doing business with or lobbying their public employer. Furthermore, in soliciting donations in excess of \$100 from these persons or entities under the log exception, a public employee *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions from vendors or lobbyists.*⁵ The log form is available on the COE website and you or the organization must complete and file this form with the Commission on Ethics office within 30 days of the charitable event or solicitation, if not related to an event. You may not solicit any person or entity with a pending application before Boynton Beach. Most importantly, you must take great care that donations accepted on behalf of Centre do not result in a *quid pro quo* for your “official action” as city commissioner.

Gift Law: Solicitations on behalf of the City

Section 2-444(g)(1)e. specifically exempts, from the prohibitions and limitations of the gift law, gifts solicited or accepted by municipal employees on behalf of their municipality “in performance of their official duties for use solely by the county or municipality for a public purpose.” Here, the City not only owns the 1913 Schoolhouse building, but provides over \$200,000 a year in staffing and donations to Centre operations. Much like RQO 10-027, where funds were solicited by county employees for use in erecting an awning at a county pool for the benefit of a non-profit entity, City employees may solicit funds on behalf of the city, so long as the City Commission determines future support of the Centre to be a public purpose and the donations are accepted by the City into the public funding stream.⁶ Therefore, the City is not prohibited from using staff resources in soliciting on behalf of the City for the ultimate benefit of the Centre.

Notwithstanding any gift law provisions or exceptions, the misuse of office section specifically prohibits using your official position to directly or indirectly specially financially benefit a charity, if you are an officer or director.

The misuse of office and gift law provisions are two separate and distinct sections of the code. Accordingly, while a solicitation may be allowable under the gift law, it may be prohibited under misuse of office. This includes the listing of your official position on the Centre’s letterhead when used to solicit donations for the Centre. Therefore, in order to fundraise, you would need to resign your position as a director of the Centre to avoid violating the misuse of office restrictions or, in the alternative, should you choose to remain as a director, all solicitation, direct and indirect, must be made without the use of your official title as Interim City Manager.

THE RATIONALE for limiting the manner of solicitation is grounded in the desire to avoid the appearance that these solicitations and donations are being made to obtain access to, or otherwise ingratiate the

⁴ §2-444(h), PBC Code of Ethics

⁵ §2-444(h)(3), PBC Code of Ethics

⁶ 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); RQO 10-040 (County employees permitted to solicit funds for county department, where funds are for use solely by the county in conducting its official business).

donor to, the elected official. Similarly, by prohibiting officials and employees from using their public office to give a special financial benefit to a particular charity of which they are an officer or director, the code further attempts to limit potential misuse of the public duty to treat all citizens and entities on an equal footing.

IN SUMMARY, while serving as an officer or director of the Centre you may not use your public employment to give the Centre a special financial benefit, not shared with similarly situated charitable organizations, despite the fact that you serve on the board by direction of your government employer. As an officer or director of a charity, soliciting donations on behalf of that charity using your official title would constitute a violation of the misuse of office section of the code.

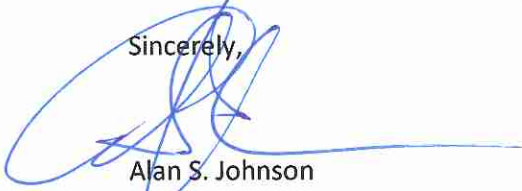
If you choose to resign your position as an officer or director, or use only your name and not your official title to solicit on behalf of the charity, you must keep a detailed log of any solicitation of donations from vendors or lobbyists of the City in excess of \$100. A copy of the log must be filed with the COE within 30 days of the event or solicitation, if no event is held.

Lastly, the City is not prohibited from soliciting funds for the benefit of the Centre, provided the City Commission designates continued support of the Centre to be a public purpose and donations are accepted and expended within the City revenue stream. In all instances, you may not solicit any gift on behalf of the Centre in exchange for any special consideration or other "quid pro quo" in your official capacity as the Interim City Manager.

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/mr/gal