



Palm Beach County Commission on Ethics

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April 6, 2012

Diana Grub Frieser, City Attorney
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 11-116
Voting Conflicts/Misuse of Office

Dear Ms. Grub Frieser,

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 April 5, 2012.

YOU ASKED how the \$10,000 threshold value of goods or services provided to a customer or client of an official or employee's outside employer is calculated when the employer is a national financial institution. Secondly, in the event that an official or employee's outside employer is divided into operational departments and/or divisions, should all goods and services for all departments be included in the calculation of the threshold amount. Finally, does the reference in the code to the "previous 24 month period" suggest that each time a matter comes before a governing body, an official recalculate the aggregate value of goods or services provided to a customer or client of their outside employer to ascertain whether or not the \$10,000 threshold has been met.

IN SUM, elected officials are prohibited from voting or participating in a matter that would financially benefit themselves, their outside employer, or a customer or client of their employer in a manner not shared with similarly situated individuals or entities. A customer or client is defined as a person or entity to which the official's business or outside employer has supplied goods or services during the previous 24 months of an aggregate value in excess of \$10,000.

The size, scope or internal organization of an entity may affect whether a customer or client is a similarly situated member of the general public.¹ However, for the purpose of calculating the \$10,000 threshold, so long as the employer has provided \$10,000 in goods or services, which department provided those services has no significance.

Lastly, the relevant threshold amount is determined at the time a matter comes before a council, board or commission. Therefore, should a customer or client return to petition the council, the value of goods or services provided over the previous 24 months is calculated at that time.

THE FACTS as we understand them are as follows:

You are the City Attorney for the City of Boca Raton (the City). A City councilwoman's outside employer is Citibank, the 3rd largest banking institution operating within the County. Matters may come before the City Council, including proposals from persons or entities who may meet the threshold definition of *customer or client* of her outside employer as defined by the Code of Ethics.

¹ RQO 11-120

Nationally, Citibank reported total assets of \$1.3 trillion dollars, 9.5% of the total assets reported by every FDIC-insured institution in the United States. In its 2010 Annual Report, Citibank states that it has 13.1 million retail customers in North America and over 21 million credit card accounts. Citibank has approximately 13 branches in Palm Beach County, 53 in Florida and 1,331 nationally located in 19 states. The councilwoman is a "business banker" at a local branch of Citibank within Boca Raton. She has no supervisory authority and is responsible for opening small business/customer accounts.

Among its many financial products, Citibank provides savings and checking accounts, credit, home and automobile loans, and securities and investment services to individuals, businesses, governments and institutional investors. Fees for goods and services received by the institution include but are not limited to, mortgage interest payments, checking fees, overdraft charges and service fees.

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

Section 2-443(a) prohibits elected officials from using their official position to take or fail to take any action *if they know or should know with the exercise of reasonable care* that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons, including the official, their outside business or employer, or a customer or client of their outside employer or business. A customer or client is defined as any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four months, having in the aggregate a value greater than \$10,000.²

Section 2-443(c) *Disclosure of voting conflicts*, similarly requires a public official to abstain and not participate in any matter coming before his or her board or commission which would result in a special financial benefit, not shared with similarly situated members of the general public, to the persons or entities listed in the misuse of office section above.

Citibank provides valuable goods and services to their customers including but not limited to, mortgages, checking and savings accounts, and overdraft and other service fees. Should a person or entity appear before an official who has actual or constructive knowledge of their status of a customer or client of his or her outside employer³, whether the official works for a bank with a million clients or a local paving company with 100 clients, when aware of the status the official may need to reasonably determine the aggregate value of their employers' goods and services provided to that client. This calculation, \$10,000 in goods or services provided over the previous 24 months, is applicable every time a customer or client appears before an official.

To be sure, determining whether one client has met the \$10,000 threshold is far more complex in the context of a large national corporation as compared to a local small business. That being said, there is a reasonableness standard contained within the misuse of office provision; that an official *knows or should know with the exercise of reasonable care* that a person appearing before her is a customer or client (as defined by the code) of the official's outside employer. Knowledge may be constructive or actual and there is no bright line definition of reasonable care.⁴ When in doubt about a specific factual scenario, you are encouraged to request an advisory opinion.

² §2-442. Definitions. *Customer or client*

³ See, RQO 11-099 (There is no bright line regarding the exercise of reasonable care in determining whether a person or entity is in fact a customer or client. The official must have actual or constructive knowledge of the status to be in violation of the misuse of office provisions)

⁴ RQO 11-101, RQO 11-099, *Commission on Ethics v. Barker*, 677 So2d 254 (Fla. 1996) (While constructive knowledge may be sufficient to pass constitutional muster, the court indicated "At the same time, however, we note that proof that something of value was given to a public official who might be in a position to help the donor one day, without more, would not establish a violation of §112.313(4)")

IN SUMMARY, a customer or client is defined as a person or entity to which an official's outside employer or business has provided at least \$10,000 worth of goods or services during the past 24 months. With respect to a banking institution, \$10,000 means the aggregate of total goods or services provided to a customer or client over the course of a 24 month period whether in the form of goods, fees, or financial services, including mortgage interest costs if the mortgage is serviced by the bank.

There is no bright line regarding actual or constructive knowledge of the status of a customer or client, including the existence and amount of goods and services provided. Knowledge is determined by the facts and circumstances presented. Lastly, the existence of a conflict is determined at the time an official is required to act in his or her official capacity.

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