



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

March 2, 2012

Norman Ostrau, Ethics Officer
The City of West Palm Beach
P.O. Box 3366
West Palm Beach, FL 33411

Re: RQO 11-121
Solicitation/Gifts/Public Purpose

Dear Mr. Ostrau,

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 March 1, 2012.

YOU ASKED in your letter dated December 19, 2011, whether procedures in place regarding solicitation of vendor donations for a City of West Palm Beach (the City) sponsored 4th of July event which includes a "VIP tent" area not open to the public are in compliance with the revised code of ethics.

IN SUM, based upon the facts and circumstances submitted, the solicitation by public employees of vendor contributions to a City sponsored event is not prohibited by the code if the contributions are solicited or accepted on behalf of the City for use solely by the City for a public purpose. Donations such as these are excluded from the definition of gift. However, the solicitation of donations from City vendors by City employees in order to provide City employees and officials and their invited guests a VIP area not open or available to the public is prohibited by the Code of Ethics.

THE FACTS as we understand them are contained in the attached COE Memorandum of Inquiry. A brief recitation of those facts is as follows:

For a number of years the City has held a 4th of July celebration (4th on Flagler) for the benefit of the public and funded by the City. At these events a separate area is created for the exclusive use of City officials, employees and their invited guests. Tickets to this VIP tent area have a face value of \$50, are distributed to City officials and employees, and are not made available to the public. The City provides funding for some aspects of the VIP area (tent, chairs), however, in-kind donations are solicited from City vendors by City employees, primarily for food and beverage. The VIP area is not established by the City Commission as a part of the 4th on Flagler event.

The 4th on Flagler VIP tent originated through the City Parks and Recreation Department (PRD). Included in the planning process are staff members and volunteers. The solicitation of vendor sponsors for the VIP tent is done by PRD employees. At the 2011 event, approximately 700 VIP tickets were printed and distributed to City officials, employees and their guests. The PRD determined the face value of the tickets to be \$50, however, based upon the amount of vendor donations per ticket, the actual value of the goods and services provided per attendee was determined to be under that amount at the 2011 event. Vendors contributing to the VIP area included Pepsi-Cola Enterprises, Brown Distributing Company and Duffy's Sports Grille. Those officials and employees receiving more than two tickets were required to report the amount as gifts under §2-444(f)(2)b. of the gift law section of the Code of Ethics.

2633 Vista Parkway, West Palm Beach, FL 33411 561.233.0724 FAX: 561.233.0735

Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com

Website: palmbeachcountyethics.com

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

Section 2-444(c) states as follows:

No county commissioner, member of a local governing body, mayor or chief executive officer 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 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.

An official or employee may not solicit a gift of any value from a City vendor if the gift is for his or her benefit, the benefit of a relative or *any other official or employee* of the City. Section 2-444(g)(1)e. provides an exception to the definition of gift where it is *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.*¹ Under the facts you have submitted, the solicitation and acceptance of food and drink donations for the VIP area from City vendors is exclusively for the benefit of City officials, employees and their guests. There is no general admission ticket or other public admittance to the VIP tent. Additionally, the establishment of an exclusive VIP tent area was made by staff. The issue of public purpose was not subject to a transparent and public hearing and vote by the City Commission. Therefore, the *public purpose* exception to the gift law restriction does not apply.

IN SUMMARY, the current City staff procedure for soliciting donations for the 4th on Flagler VIP tent area violates the Code of Ethics insofar as the benefit of the solicitation is received by City officials, employees and their guests and therefore is not used *solely by the municipality for a public purpose*.

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/gal

¹ RQO 10-027, RQO 10-040, RQO 11-021