

Palm Beach County Commission on Ethics

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Alan S. Johnson

January 5, 2011

Bill Johnson, Director
Palm Beach County Emergency Management
20 S. Military Trail
West Palm Beach, FL 33415

Re: RQO 11-123
Outside Employment/Government Employer

Dear Mr. Johnson,

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 27, 2011 whether it would violate the code of ethics for Palm Beach County Emergency Management/Department of Public Safety personnel to accept part-time employment as dispatchers with a municipal police department where the county employees have a direct influence over financial and budget matters that could potentially impact the municipal dispatch centers.

IN SUM, the code of ethics specifically exempts other governmental entities from the definition of "outside employer or business." Therefore, the prohibition against a public employee working for an outside employer who has contracts with their government employer does not apply to employees working part-time for other governmental agencies. Notwithstanding, the county or municipal government may apply more stringent conditions or regulations concerning outside employment, by merit rule or other internal policy or procedure.

At all times however, a public employee may not use his or her official position in a corrupt manner or a manner that will result in a special financial benefit to him or herself.

THE FACTS as we understand them are as follows:

You are Director of Palm Beach County Emergency Management (EM) and have received notification that three EM employees have sought work as part-time dispatchers with municipal police departments. The three EM employees work full-time in the 9-1-1 section of the Division of Emergency Management/Department of Public Safety (EMPS). The municipal police departments serve as 9-1-1 dispatch centers, technically referred to as Public Safety Answering Points (PSAPs)

The job responsibilities of the three county employees are as follows:

One employee is section manager with a job classification of Senior Manager Emergency Management Programs, and is responsible for managing the entire 9-1-1 Program, including implementation of the new Next Generation 9-1-1 installation contracts/project, as well as overseeing the 9-1-1 budget reimbursement requests.

A second employee is the 9-1-1 Coordinator and is responsible for preparing budgets for both county and municipal PSAPs, preparing PSAP budget reimbursement requests, and serves as the county/liaison between the Florida Division of Emergency Management, the Statewide 9-1-1 Coordinator, and the E9-1-1 Board.

A third employee is a 9-1-1 specialist and is responsible for 9-1-1 public outreach and training.

As EM Director, you are concerned with potential conflict of interest with regard to the first two employees since both are in county positions that have a direct influence over financial and budget matters that could potentially impact the municipal dispatch centers. Therefore, the Director of the Department of Public Safety rescinded authorization for the first two employees to work part-time as dispatchers for the municipal police departments. Since the third employee has no fiduciary responsibilities in her county job classification, county administration has permitted her to accept employment as a part-time dispatcher.

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

Section 2-443(d) prohibits a public employee from entering into contracts with his or her public employee directly or through an outside business or employer. Section 2-443(e) provides exceptions and waivers, including outside employment waivers when the employee or relative of the employee does not work in the county department which will *enforce, oversee or administer the subject contract* or maintain job responsibilities or descriptions that require involvement in the outside contract.

In the facts you submitted, the individual employees would not be directly contracting with the county. However, their part-time government employer does maintain such contracts. If the outside employment was with a private entity, they would be prohibited from such employment. The code excludes other governmental entities from the definition of outside employer.¹ Therefore, the prohibition against working for an outside employer who contracts with a government employer does not apply if the outside employer is another government.²

Section 2-443(a) states as follows:

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;

Section 2-443(b) prohibits an official or employee from using his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. "Corruptly" means done with a wrongful intent and for the purpose of obtaining *any benefit* resulting from some act or omission which is inconsistent with the proper performance of his or her public duties.

Although working as a dispatcher for another governmental entity may not be prohibited under the code, depending upon the facts and circumstances actions taken by county employees who have direct influence over financial and budget matters could result in either a personal financial benefit or an action inconsistent with the proper performance of their county duties. In these circumstances, a special benefit to an outside government employer may result in a violation of the code if the facts indicate a *quid pro quo* or other benefit to the individual employee or a more general corrupt misuse. The first two employees are in a supervisory role with county EMPS.

¹ §2-442 Outside employer or business includes: (1) *Any entity, other than the county, state, or any other federal regional, local, or municipal government entity...*

² RQO 10-028 OE, RQO 10-037 OE, RQO 11-031 OE

More importantly, they have the capacity to use their county office to specially benefit one municipality over another. Even if the facts do not rise to a violation, the appearance that their impartiality is compromised is present.³ The third employee has no supervisory, financial or budgetary influence based on her county job classification. The potential for misuse therefore is greatly diminished if not eliminated for this employee.

Lastly, notwithstanding the requirements of the Code of Ethics, the county and municipalities may act based upon merit rules or other policies and procedures that are not in conflict with the code. Therefore, even if the code does not prohibit an outside employment, the individual governmental entity may decline to allow such employment under its own rules.

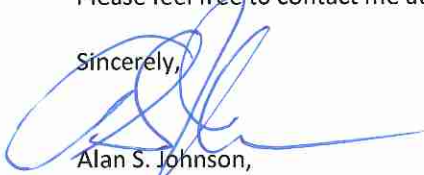
IN SUMMARY, a governmental entity is not considered an outside employer as defined by the Code of Ethics. Therefore, the contractual relationship section of the code does not apply to a public employee whose outside employer is another government entity. Notwithstanding, financial and corrupt misuse of office sections apply to public employees who use their official position to financially benefit themselves or otherwise corruptly use their office to obtain any benefit for themselves or any other persons.

County or municipal merit rules or other policies and procedures may impose a stricter standard of conduct upon public employees and officials.

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

³ §2-441. Title; statement of purpose. Officials and employees in the public service shall be conscious that public service is a public trust, shall be impartial and devoted to the best interests of the people of Palm Beach County