



Palm Beach County Commission on Ethics

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February 3, 2012

Ms. Carol Eddy Langford, Manager
Palm Beach County Mortgage and Housing Assistance
100 Australian Avenue N., 5th Floor
West Palm Beach, FL 33406

Re: RQO 12-003
Voting Conflicts/Misuse of Office

Dear Ms. Langford,

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 February 2, 2012.

YOU ASKED in your letter dated January 10, 2012 whether the code prohibits a lobbyist who lobbies Palm Beach County from being appointed to the Palm Beach County Commission of Affordable Housing Advisory Board.

IN SUM, the code of ethics does not prohibit a lobbyist from serving on a county or municipal advisory board. However, advisory board members are prohibited from using their official position to give a special financial benefit, not shared with similarly situated members of the general public, to themselves, their outside employer or business or a customer or client of their outside employer or business. Voting on a client's proposal, participating in conversations or attempting to influence fellow board members or county staff would constitute a misuse of office. The prohibition extends to the advisory board member, or someone using the member's official position on their behalf.

THE FACTS as we understand them are as follows:

You are the manager of Mortgage and Housing Assistance for Palm Beach County (MHA), the department subject to the authority of the Commission of Affordable Housing Advisory Board (CAHAB). The CAHAB is authorized by Florida Statutes §420.9076 and oversees State Housing Initiatives Partnership Program funds. Section 420.9076(2) parts (a) and (c) require the Board of County Commissioners (BCC) to appoint members who are "actively engaged in the residential home building industry of affordable housing."¹ Unlike state established boards that act independently of the local governing body, the CAHAB is essentially an advisory board to the BCC.² Based upon the information you provided, several members of the CAHAB have resigned due to conflicts. You are considering submitting to the BCC two individuals who have disclosed their status as registered lobbyists. One of the potential candidates lobbies the state of Florida and the second candidate is a registered lobbyist in Palm Beach County.

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

¹ Florida Statute §470.9076 provides that should a local governing body be unable to appoint a citizen actively engaged in these activities in connection with affordable housing, based upon the presence of a conflict of interest by prospective appointees, or other reasonable factor, a citizen without regard to affordable housing may be appointed.

² Compare RQO 11-036 (Local boards authorized by state statute, whose members are appointed by local governing bodies but whose board operates independently of a municipal or county governing bodies are officials- not advisory board members)

The Code of Ethics does not prohibit a lobbyist who has no contractual relationship with the county from serving in their personal capacity as an advisory board member or an official.³ That being said, §2-443(a) prohibits all advisory board members, officials, and employees from using their official position to give themselves, their outside business, or a customer or client of their outside business a financial benefit, in a manner which they know 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. Section 2-443(c) similarly prohibits an advisory board member or official from voting on an issue or participating in a manner that would result in a special financial benefit attributable to themselves, their outside business or customer or client. A customer or client is defined as *any person or entity to which an official's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).*⁴

These provisions do not prohibit other employees of a board member's outside business from representing their client's interest in matters before their board. However, once a matter does come before the CAHAB, the advisory board member must 1) disclose the nature of the conflict before the board discusses the issue; 2) abstain from any discussion or vote and not otherwise participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the CAHAB clerk and to the Palm Beach County Commission on Ethics (COE).


As with all advisory board members, any use of one's official title or position to obtain a special financial benefit for one of the seven entities prohibited by the code, including an outside employer, customer or client, would violate §2-443(a) *Misuse of public office or employment.*

IN SUMMARY, based on the specific facts and circumstances, the Code of Ethics does not prohibit these registered lobbyists from serving on a county advisory board. However, no advisory board member may use his or her official position to give themselves, their outside business or employer, or a customer or client of their outside business or employer, a special financial benefit, not shared with similarly situated members of the general public. If a conflict exists, the advisory board member must abstain from voting and not participate in the matter before the board.

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/mcr/gal

³ §2-443(d) places certain limitations on an official who has a contractual relationship with the public entity he or she serves. In cases where the official sits on a decision-making board and the contracts involve the board or department within its authority, membership on that board is prohibited unless a specific exception applies.

⁴ §2-442. Definitions