

# 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

January 24, 2012

Chuck Magazine, Risk Manager  
City of Boynton Beach  
100 East Boynton Beach Blvd.  
P.O. Box 310  
Boynton Beach, FL 33425

Re: RQO 12-006  
Gifts/Solicitation for Public Use

Dear Mr. Magazine,

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 email dated January 23, whether a Veterans Advisory Commission member may solicit construction materials and services from past and potential vendors of the City of Boynton Beach (the City) solely for use by the City in constructing public monuments in a City park.

IN SUM, there is no prohibition against soliciting or accepting a gift of any amount provided the vendor or lobbyist does not vend or lobby the volunteer official's board or the department within the board's authority. Additionally, even if the vendor appears before the board or department, an official or employee is not prohibited from soliciting or accepting gifts in excess of \$100, annually in the aggregate, on behalf of his or her municipality in the performance of their official duties where these gifts are for use solely by the municipality for a public purpose. Notwithstanding, an advisory board member may not use his or her public office to obtain a special financial benefit or otherwise obtain a *quid pro quo* in exchange for these gifts.

THE FACTS as we understand them are as follows:

You are the risk manager for the City and serve as staff liaison to the Veterans Advisory Commission (VAC) on behalf of the City. As part of your duties, you coordinate activities with the various City Departments as it relates to Veterans' issues. The City has created and appointed members to the VAC.

An issue has arisen where a member of the VAC has been in contact with a past and potential future City vendor to obtain donated concrete for use in a City Park as a base for approved veteran monuments. In addition, a private organization, Boynton Veterans Council (BVC), includes members of the VAC and is likewise soliciting free services and products for use in erecting these monuments in the City Park. The vendors being solicited do not lobby or appear before the VAC.

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:

The Code of Ethics applies to officials and employees of Palm Beach County and the municipalities within the County.<sup>1</sup> Therefore, members of the VAC, appointed by the City Commission are within the jurisdiction of the code. Members of the BVC, a non-profit organization, are not subject to the code unless they are also members of the VAC.

Section 2-444(b)(1) states as follows:

No advisory board member, or any other person on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any vendor, lobbyist, or any principal or employer of a lobbyist, who lobbies the recipient's advisory board, or any ...municipal department...that is subject in any way to the advisory board's authority.

However, even if prohibited under §2-444(b)(1), the gift law does not apply to *gifts solicited or accepted by municipal officials on behalf of the county or municipality in performance of their official duties for use solely by the municipality for a public purpose.*<sup>2</sup>

Under the facts you have submitted, the vendors being solicited do not appear before the VAC nor do they do business with your City Department. Therefore, the gift limitations under §2-444(b)(1) do not apply, whether or not the solicited items are for use by the municipality for a public purpose.

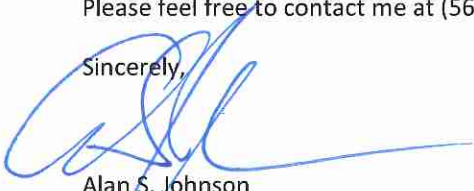
At no time may an official solicit or accept a financial benefit in exchange for the performance of their official duties.<sup>3</sup> Nor may an official corruptly use their official position to benefit any person or entity.<sup>4</sup>

IN SUMMARY, members of the VAC are not prohibited from soliciting or accepting gifts from vendors who do not appear before their board or do business with the City department within the Board's jurisdiction. Nor are they prohibited from soliciting or accepting gifts valued in excess of \$100, annually in the aggregate, from vendors who do appear before the board, provided that the solicitation is in their official capacity for use solely by the municipality for a public purpose. At no time may a VAC member use their official position to obtain a *quid pro quo* personal benefit in exchange for an official action.

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

<sup>1</sup> §2-444. Definitions. *Official or employee*

<sup>2</sup> RQO 10-027, RQO 10-040

<sup>3</sup> §2-443(a)

<sup>4</sup> §2-443(b)