

# Palm Beach County Commission on Ethics

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March 2, 2012

Rebecca Caldwell, Director  
Palm Beach County Building Division  
2300 Jog Road  
West Palm Beach, FL 33411

Re: RQO 12-008  
Gift Law/Awards

Dear Ms. Caldwell,

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 phone call and follow-up emails dated February 3, whether you could accept two tickets, with a face value of \$125 each, to a banquet given by a non-profit trade organization that lobbies the Palm Beach County government where you are receiving a plaque honoring your work in creating a county-wide "universal building permit application."

IN SUM, based on the facts you have submitted, you are not prohibited from accepting an award for civic or professional achievement. The code prohibits your accepting a gift with a value, in the annual aggregate, of more than \$100 from a lobbyist or principal of a lobbyist who lobbies your government employer. Therefore to the extent the value of the tickets you receive exceeds \$100 you must return the difference to the organization.

THE FACTS as we understand them are as follows:

You are the Director of the Palm Beach County Building Department. As part of your duties, you are responsible for administration and enforcement of the various State and County Building, Zoning and Development Codes. In addition, you play a major role in developing and coordinating multi-agency programs, as well as coordinating efficiency and cooperation between Palm Beach County and various industry groups. Your responsibilities include enforcement of Land Development Codes in the construction process, and Building Codes in the development process. You are also responsible for staffing four advisory boards under the Building Division, including the Building Code Advisory Board (BCAB).

As part of your official duties you were one of two building officials that played a principal role in developing a "consensus based, legally correct, county-wide universal building permit application." According to an October, 2011, press release, "the Building Officials Association of Palm Beach County, Associated General Contractors, Gold Coast Builders Association and Associated Builders and

Contractors collaborated with the BCAB to develop a universal building permit application.” As a result, the county and all 38 municipalities within the county now have a standard application process resulting in “reducing red-tape, while retaining the integrity of the process.”

You have been asked to attend the annual banquet of the local chapter of the Associated General Contractors (AGC), a non-profit trade organization (501C-6), and to receive a plaque honoring your work in developing the universal building permit application. The AGC promotes general industry issues and concerns. Although it does not represent individual contractors, AGC does lobby Palm Beach County government on behalf of all member contractors. AGC also lobbies your division and their input is solicited by you in many cases. On rare occasions, you may get a phone call requesting that you review a specific situation on behalf of a member contractor.

The cost of a banquet ticket is \$125 per person and both you and your husband are invited to attend. Your attendance at this event is encouraged by your Director as a part of your official duties for the Building Department.

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

Section 2-444(a) prohibits a public employee from accepting a gift with a value of greater than \$100 in the annual aggregate from a vendor, lobbyist, or principal or employer of a lobbyist who lobbies the employee’s public employer. AGC is the principal of a lobbyist who lobbies Palm Beach County.

However, §2-444(g)(1) provides a number of exceptions to the definition of gift. One such exception is an award for professional or civic achievement.<sup>1</sup> The award itself is, therefore, not considered a gift. While the award would not constitute a prohibited gift, the banquet itself would be considered a gift and may not exceed \$100 in value as it is sponsored by the principal of a lobbyist.<sup>2</sup> Therefore, the value in excess of \$100 must be returned to AGC as consideration within 90 days of the event.<sup>3</sup>

Another exception to the definition of gift involves gifts solicited or accepted by county employees on behalf of the county in performance of their official duties *for use solely by the county for a public purpose*.<sup>4</sup> While your Director would like you to attend, the facts you have submitted do not appear to support the “solely for a public purpose” aspect of your attendance.<sup>5</sup>

Lastly, §2-444(g)(1)i. provides an exception to the definition of gift for tickets in connection with public events, appearances or ceremonies related to official county business, if furnished by a non-profit sponsor organization, provided the sponsor *does not employ a lobbyist*. AGC employs a lobbyist and therefore this exception does not apply.

IN SUMMARY, awards for civic or professional achievement are not considered gifts. However, the value of an awards banquet ticket, if in excess of \$100, is prohibited if given by a lobbyist, principal or

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<sup>1</sup> §2-444(g)(1)c.

<sup>2</sup> RQO 11-048

<sup>3</sup> RQO 10-005, §112.312(12)(a), Florida Statutes.

<sup>4</sup> RQO 12-006, RQO 10-027, RQO 10-040

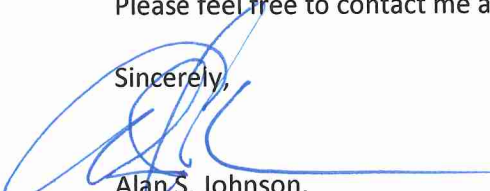
<sup>5</sup> RQO 11-021

employer of a lobbyist who lobbies your public employer. The ticketed amount in excess of \$100 must be returned to the donor within 90 days.

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 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson,  
Executive Director

ASJ/gal