



# Palm Beach County Commission on Ethics

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Alan S. Johnson

March 2, 2012

Chief Anthony Strianese  
Delray Beach Police Department  
300 W. Atlantic Avenue  
Delray Beach, FL 33444

Re: RQO 12-009  
Gift Law

Dear Chief Strianese,

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 an email dated February 8, 2012 whether Delray Beach Police Department employees could attend a citizen-sponsored employee awards dinner and if so what is required of the non-profit sponsor and of your employees.

IN SUM, public employees, or any person or entity on their behalf, are prohibited from soliciting a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies their public employer, if the solicitation is for their own personal benefit, the benefit of their relatives or household members or the benefit of another employee.

This prohibition does not extend to soliciting or accepting donations from persons and entities who are not vendors, lobbyists, or principals or employees who sell lease or lobby their public employer, as long as there is no quid pro quo or other benefit given for the past, present or future performance an official act or legal duty.

Gifts in excess of \$100 are to be reported on an employee's annual Palm Beach County gift reporting form, unless one of several exceptions apply. The definition of "gift", specifically excludes awards for professional or civic achievement and accordingly do not have to be reported.

THE FACTS as we understand them are as follows:

You are the police chief for the City of Delray Beach (the City). For the past 9 years the City of Delray Beach Police Department (DBPD), in conjunction with the Delray Citizens for Delray Police (DCDP), has held an annual employee awards dinner. The DCDP is a 501(c)3 non-profit, police-community relations support group. Its purpose is to support the Delray Beach Police Department, "both morally and financially." The DCDP provides annual scholarships for the children of sworn officers, sponsorships for an array of fundraisers and events for the purchase of equipment, and support for families of officers in times of need. You believe that in the past the DCDP may have solicited donations from vendors and lobbyists of Delray Beach. No member of the DBPD solicits on behalf of the DCDP. The DCDP is a civilian organization, and DBPD employees are neither members of the non-profit nor do they serve on the board of directors.

The awards dinner is held at the Delray Beach Marriott and costs \$38 per person. This includes dinner, coffee or tea plus one drink ticket. DBPD employees pay \$30 per person if they choose to attend and the DCDP incurs the \$8 additional expense plus the bar tab. The DCDP sponsors five awards: 1- Officer of the Year, 2- Employee of the Year, 3- Rookie Officer of the Year, 4- Investigator/Agent of the Year, and 5- Supervisor of the Year. Each recipient receives a plaque. The average cost for the plaques is \$220. The Officer and Employee of the Year recipients also receive \$500 cash awards from the DCDP. Rookie Officer, Investigator/Agent, and Supervisor award recipients receive \$200 cash awards.

In addition, over the course of the year, the DCDP solicits donations for condolence gifts, college scholarships for children of department employees and for training and equipment for the department itself.

THE LEGAL BASIS for the commission's opinion is found in the following relevant sections of the 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. (emphasis added)

As currently proposed, DCDP is soliciting donations in order to provide for achievement awards and ticket discounts that will personally benefit DBPD employees and their families. While the Code of Ethics ordinarily would allow a non-profit associated with a municipal department or a non-profit honoring a public employee or official to solicit or accept donations on behalf of a charitable organization provided vendor and lobbyist donations in excess of \$100 are recorded on a log and filed with the COE<sup>1</sup>, the code prohibits such solicitation from vendors or lobbyists if the gift will benefit *any* City employee.<sup>2</sup> Accordingly, solicitation of funds for the Awards Dinner and employee awards from vendors or lobbyists who vend, lease or lobby the City is prohibited.<sup>3</sup>

Solicitation of residents or any other person or entity that is not a vendor or lobbyist of the city is not prohibited, provided there is no quid pro quo or other benefit given for the past, present or future performance an official act or legal duty in exchange for the gift.

Likewise, where DCDP solicits donations for condolence gifts, college scholarships for children of department employees, if the donation will personally benefit a DBPD employee or their families, they may not be solicited from vendors and lobbyists of the City.

THE RATIONALE for limiting solicitation of donations by employees and officials, or others on their behalf, from lobbyists and vendors of their public employer is grounded in the desire to avoid the appearance of obtaining a financial benefit through one's official position. As for gifts that do not involve lobbyists or vendors, general reporting requirements and other limitations serve to increase transparency and remove the appearance that donations are made to influence official decisions or improperly obtain access to public employees or officials.

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<sup>1</sup> §2-444(h)(2)

<sup>2</sup> §2-444(c)

<sup>3</sup> Compare RQO 11-053 (public employee may accept a gift for outstanding performance or length of service donated by an *independent* civic organization as an award for civic or professional achievement as compared to here where a retirement gift would be solicited by a non-profit entity created for the benefit of the department).

Section 2-444(g) defines a gift as “the transfer of anything of economic value” and §2-444(f) requires employees to complete an annual gift disclosure report if the value of the gift exceeds \$100, unless one of several exceptions apply.

Sec. 2-444(g)

(1) Exceptions. The provisions of subsection (g) shall not apply to:

c. Awards for professional or civic achievement;

The definition of “gift”, specifically excludes awards for professional or civic achievement. For that reason, department employees are not required to report the value or receipt of such an award on their annual gift reporting form. As long as the benefit is truly an award for professional or civic achievement, and not a subterfuge to otherwise obtain a benefit for a wrongful purpose, the award is not considered a gift under the code.<sup>4</sup> Based upon the facts and circumstances you have provided, the benefit of a plaque and cash gift of up to \$500, considering the significance of the award in question, fits within this exception to the definition of “gift.”

Based upon the facts and circumstances you have provided, employees in attendance will receive slightly discounted tickets and the DCDP will cover the bar tab at the event. In addressing the gift law requirements, the Commission on Ethics adheres to the Florida standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code (FAC). The FAC suggests that when a gift is provided indirectly with the intent to benefit a public employee, it may be considered a gift to that employee. For example, if an employee brings their spouse and receives two discounted tickets, the value of the gift from the DCDP is \$16, plus the value of the beverages consumed from the DCDP paid bar tab. Therefore, assuming the value to be less than \$100, no gift report is required.

Sec. 2-444(g)

(1) Exceptions. The provisions of subsection (g) shall not apply to:

e. Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose.

The solicitation of donations specifically earmarked to a public department for a public purpose would not constitute a gift under the code. Therefore, the DCDP is not prohibited from soliciting vendor and lobbyist donations for training and equipment, so long as those donations are specifically solicited and earmarked for the operational needs of the DBPD as compared to an employee’s personal use.<sup>5</sup>

Notwithstanding the gift law, financial and corrupt misuse of office code provisions would apply if the donations were solicited or accepted based upon a quid pro quo or other wrongful act or omission inconsistent with the proper performance of an official or employee’s public duty.

Section 2-443(b), *Corrupt misuse of official position*, prohibits any 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. For the purposes of this subsection, “corruptly” means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

This section of the code would specifically prohibit a City employee from accepting any benefit, directly or indirectly, including awards for professional or civic achievement, if these sponsorships were corruptly linked in

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<sup>4</sup> RQO 11-048

<sup>5</sup> See RQO 11-056 (PD employees permitted to solicit funds for a Police foundation where the funds are specifically earmarked for purchase of police equipment) also, see RQO 10-027, RQO 10-040.

any way to a *quid pro quo* arrangement. *Corruptly* includes an act or omission that is done with a wrongful intent which is inconsistent the proper performance of public duties.

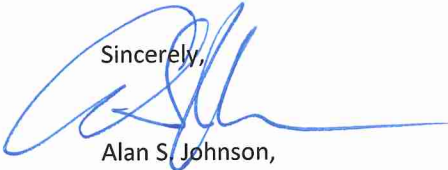
IN SUMMARY, DBPD officers and employees are not prohibited from accepting awards for professional or civic achievement. Awards for professional or civic achievement are not considered gifts under the gift law provisions of the code of ethics. However, neither DCDP employees nor anyone else on their behalf, are permitted to solicit donations from vendors, lobbyists, principals or employers of lobbyists of the City if the solicited donations will personally benefit themselves, a relative or household member or a fellow employee of the DBPD. Solicitation of donations from residents or other persons or entities who are not vendors or lobbyists of the City is not prohibited, provided there is no official quid pro quo offered in exchange for the donation.

DCDP may solicit donations from vendors, lobbyists and principals or employers of lobbyists if the donations are specifically solicited and earmarked for the operational needs of the DBPD and no quid pro quo benefit is given to the donor, as these solicitations would be for a public purpose and not for personal benefit.

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