

# Palm Beach County Commission on Ethics

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March 2, 2012

Nanci Simonson, VP, Relationship Manager Business Deposit Services  
Branch Banking & Trust Company, South Florida Region  
110 East Broward Blvd., Suite 105  
Ft. Lauderdale, FL 33301

Re: RQO 12-010  
Gift Law/Discounts

Dear Ms. Simonson,

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 9, 2012, whether your employer, Branch Banking & Trust Company (BB&T), may offer banking benefits, including fee waivers, and other discounted services to employees of municipalities who are BB&T customers. In a follow up conversation on February 13, 2012, you asked what effect offering these same benefits to all county or municipal employees, regardless of whether their government employer is a BB&T customer would have on your ability to offer public employee discounts.

IN SUM, as a vendor of certain municipalities, BB&T is prohibited under the PBC Code of Ethics from offering a personal benefit to officials and employees of municipalities, if the value of the benefit is greater than \$100 annually in the aggregate for the individual employee or official, or if any benefit is offered as a quid pro quo for an official public action or the past, present or future performance of any legal duty. However, a similar offer to all local governmental employees, regardless of whether their public employer is a banking customer of BB&T, would not be prohibited by the gift law under the exception for publicly advertised offers made available to the general public.

THE FACTS as we understand them are as follows:

You are a Vice President of Branch Banking & Trust Company (BB&T), and Relationship Manager for Business Deposit Services. BB&T has several Palm Beach County municipalities as customers, some of which are full service customers and others who have loans with your bank but no other accounts. BB&T would like to offer all employees of its municipal customers, who choose to also Bank with BB&T, certain special benefits including fee waivers and discounted services. It is not mandatory that an employee enroll with your bank, however, you are merely offering another banking option to those who choose to bank with BB&T. You advise that the question has been raised as to whether or not this offer is "a conflict or ethics violation."

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

The Code of Ethics defines a vendor to include any person or entity who *currently sells goods or services...to the county or a municipality.* (Emphasis added)<sup>1</sup>

Under this definition, BB&T is a vendor to those municipalities who use its banking services, including loans and other accounts as BB&T provides services to their government customers in the regular course of their business as a banking institution.

Section 2-444(a)(1) of the Code of Ethics, prohibits county and municipal officials and employees from accepting, directly or indirectly, gifts valued at more than \$100, annually in the aggregate, from any vendor or lobbyist of their governmental employer.

Section 2-444(a)(2) prohibits county and municipal vendors and lobbyists, or employers or principals of lobbyists from giving these prohibited gifts to persons they know are officials or employees of a governmental entity for whom they are vendors or that they lobby.

Section 2-444(e) prohibits any person or entity from offering, giving or agreeing to give a gift of any value to any county or municipal official or employee, as well as prohibiting any official or employee from accepting or agreeing to accept a gift of any value, because of the past, present or future performance or non-performance of an official act or legal duty.

Section 2-444(g), defines a gift as, "the transfer of *anything of economic value*, whether in the form of money, *service*, loan, travel, entertainment, hospitality, item or promise, or in any other form, *without adequate and lawful consideration.* (Emphasis added)

However, Section 2-444(g)(1)(f) offers an exception to the definition of gift for "Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public;"

Where a municipality is a banking customer of BB&T, the bank is a vendor of that governmental entity, and thus must abide by the Code regulations concerning gifts as listed in Section 2-444 of the Code, unless an exception to this rule applies, for example, as is found in 2-444(g)(1)(f) above.

In a previous advisory opinion, the COE was asked whether discounts offered by various restaurants within a municipality, some of which were vendors of the town, violated the Code of Ethics. In response, the COE opined, "Town employees are not prohibited from accepting discounted food at local restaurants, provided that the discount is not based on preferred official treatment of the vendor by the employee, the discount applies to all similarly situated government employees or officials, and it is not otherwise offered as a quid pro quo or to convey a special financial benefit in violation of the misuse of office sections of the code."<sup>2</sup> This opinion was based on several factors, including that all participating restaurants were located within the town, the offer was for all town employees, and the offer included several restaurants that were not vendors of the town. By contrast, the BB&T discount is offered only to those municipal employees whose municipalities do business with BB&T and excludes all other municipalities where BB&T is not doing business. Under these circumstances, BB&T runs afoul of the "publicly advertised offers" exclusion to the extent that it becomes a targeted discount.<sup>3</sup>

Therefore, where BB&T is offering discounted services only to employees of municipalities with whom BB&T has a business relationship, BB&T in effect must abide by §2-444 of the Code, and may not offer this benefit to these targeted employees if the value of the benefit is greater than \$100 annually for any individual employee, or if any

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<sup>1</sup> §2-442. Definitions

<sup>2</sup> RQO 11-054

<sup>3</sup> RQO 11-002, RQO 11-007, 11-054 ("Regarding vendors, the COE determined that so long as discounts were not directed to a select individual or group of individuals singled out to receive a special discount not available to other similarly situated government employees, the general public discount exception may apply")

benefit is offered as a quid pro quo for any official public action or the past, present or future performance of any legal duty.

However, in another opinion regarding a national corporate vendor and discounted services for public employees, the COE determined that so long as discounts were not directed to a select individual or group of individuals singled out to receive a special discount not available to other similarly situated government employees, the general public discount exception may apply.<sup>4</sup> Based on this opinion, if BB&T wishes to offer this benefit to all municipal and county governmental employees across the board, then the discounts would not be targeted and the \$100 annual aggregate gift prohibition may therefore not apply.

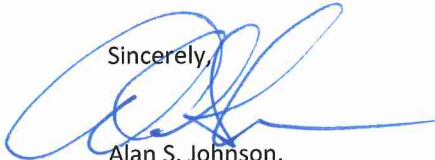
Notwithstanding the gift law exception, misuse of office provisions prohibit any official or employee from using their official position to give a special financial benefit to themselves, relatives, household members or domestic partners or spouses, outside business interests including customers or clients, charitable organizations if they are an officer or director, or debtors or creditors other than financial institutions. Moreover, public officials or employees may not use their positions corruptly for the benefit of anyone. While an employee of a BB&T municipal customer may choose to bank with BB&T, and accepting a non-targeted discount may not constitute a gift, it may result in a misuse of office if the official or employee were to use their official position to specially benefit the bank.

IN SUMMARY, while you may not offer discounted banking services, if valued at greater than \$100, only to employees of municipalities for which you are a vendor, you may offer such discounts for all local governmental employees under the code exception for publically advertised offers available to the general public, so long as the discounted services are not offered as a quid pro quo for any official public action or the past, present or future performance of any legal duty.

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/meb/gal

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<sup>4</sup> RQO 11-064 (Nationwide cell phone carrier discounts for public employees)