



Palm Beach County Commission on Ethics

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April 6, 2012

Fire Chief Ray Carter, CFO, EFO
Director of Fire and Emergency Medical Services
Boynton Beach Fire Rescue
100 East Boynton Beach Blvd.
Boynton Beach, FL 33435

Re: RQO 12-016
Travel Expenses/Contract

Dear Chief Carter,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on April 5, 2012.

YOU ASKED in your e-mail of February 28, 2012, whether including the cost of employee travel expenses for pre-build conferences and acceptance conferences for Fire-Rescue and other Fire Apparatus Vehicles in the contract price of the vehicles violates the prohibition on accepting travel expenses from vendors section of the Code of Ethics.

IN SUM, while public employees may not accept, directly or indirectly, travel expenses from a municipal vendor, service provider, bidder or proposer, this prohibition does not apply to expenses ultimately paid by the municipality from municipal funds pursuant to a contract for the purchase of goods and where the purpose of the travel is to ensure that the terms of the contract are fulfilled.

THE FACTS as we understand them are as follows:

You are the Fire Chief of the City of Boynton Beach Fire Rescue Department. When purchasing ALS Fire Rescue and Fire Apparatus Vehicles, it has been a long standing practice of the City of Boynton Beach (the City) to include the cost of sending City employees to a "pre-build" as well as an "acceptance" conference with the City vendor at the vendor's place of business where these conferences are within the contract specifications for these high dollar purchases. Two persons from the Fire Rescue Department are required to go to these conferences with the manufacturer and their function is to ensure compliance with the contract specifications as written and to make any necessary adjustments to any design issues that arise as the result of engineering conflicts or design flaws that may have caused maintenance issues with these vehicles in the past.

The conferences typically last two days including travel time. The cost of airfare, hotel rooms and meals are included as a line item in the Bid Documents and final invoice when the vehicle price is paid by the City. The manufacturer makes the travel arrangements based on the vehicle production schedule. The practice of including the travel conferences as a line item in the Bid Document was to ensure transparency and to avoid any perception that a vendor was independently *wining and dining* or *paying travel expenses for city personnel as part of a quid pro quo to ensure continued utilization as a vendor for these high dollar pieces of equipment*. All vendors are required to include these costs as part of their price quotes during the bid process.

THE LEGAL BASIS for this opinion relies on the following sections of the Palm Beach County Code of Ethics:

Section 2-443(f) *Accepting travel expenses*. No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

In most instances, the payment of travel expenses by a vendor is prohibited unless an employee obtains a waiver from the governing body. The purpose of the waiver process is to make any such payment, even for governmental purposes, an open and transparent matter. However, under the facts and circumstances you have submitted, the contract/quality related conferences are an inseparable part of the cost associated with the emergency vehicles and, as such, are borne by the City as a line item included into the price of the units. Therefore, the costs are identified and ultimately paid by the City per contract, although the initial payment is provided by the vendor. The costs paid by the City are identified as a line item and become the responsibility of the City upon acceptance of the bid contract. As a line item, the travel cost is identified and quantified transparently. In essence, the vendor is paying the cost of these quality conferences on behalf of the City and is reimbursed by the purchasing department as per contract.

Any other cost associated with travel that is paid by the vendor and is not specifically identified and quantified in the bid contract would require a waiver by the City Commission. Any gift not associated with contractual travel expenses is subject to the limitations and prohibitions of the gift law. For example, §2-444(a) prohibits a public employee from accepting a gift of a value in excess of \$100, annually in the aggregate, from a vendor or lobbyist of his government employer, unless one of several exceptions apply. In addition, an employee may not accept anything of value as a *quid pro quo*, or in exchange for the past, present or future performance of an official act or legal duty.

IN SUMMARY, based on the facts and circumstances you provided, where specific municipal employee travel expenses are made part of a transparent bid process to ensure compliance with contract specifications as written, and the contract includes specific provision for these expenses, the identified and quantified line item travel cost is effectively a payment by the City and not the vendor. The bid process provides transparency and the restrictions against accepting travel expenses do not apply.

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 questions in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/gal