



Palm Beach County Commission on Ethics

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April 6, 2012

Norm Ostrau, Ethics Officer
401 Clematis Street, 5th Floor
West Palm Beach, FL 33401

Re: RQO 12-017
Gift Law/Scholarships

Dear Mr. Ostrau,

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 an email dated March 5, whether West Palm Beach Employees may accept reduced tuition to attend a Florida International University online MBA program.

IN SUM, City employees are not prohibited from accepting a tuition discount or scholarship from Florida International University (FIU) based upon their status as a city employee provided that there is no quid pro quo or special treatment or privileges given to FIU or its agent, Academic Partnerships, in exchange for offering these scholarships.

For purposes of gift law reporting, tuition discounts or scholarships received by public employees or their family members for degree programs, when based on their public employment status, are reportable gifts under the Code of Ethics.

THE FACTS as we understand them are as follows:

You are the ethics officer for the City of West Palm Beach (the City). Florida International University (FIU) offers an online Masters in Business Administration (MBA) program. The MBA program is administered by a private company, Academic Partnerships (AP). FIU is a public university and is established by state statute as a part of the executive branch of state government. AP is not a vendor of the City. As an agent of FIU, AP seeks out and offers tuition discounts to businesses and governmental entities with over 100 employees. Current corporate partners include the City of Miami Beach, Miami-Dade County, Performance Food Products, Coral Gables, First Bank Florida, Enterprise Bank of Palm Beach and the Pahokee Chamber of Commerce. Corporate partners are required to send a program announcement to all of their employees, but otherwise there is no financial or contractual commitment between the university and the partner entity. Were the City to become a corporate partner, a city employee or their family members would pay \$27,500 for the MBA degree while a student whose employer is not a corporate partner would pay \$37,500.

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

Sec. 2-442 Definitions.

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable.

Here FIU and AP are arguably offering a good or service, an MBA degree, to employees of the City. Because the benefit of FIU's offer goes directly to an employee in their personal capacity as compared to the city, FIU and AP are not vendors as defined by the code of ethics.

Sec. 2-444. Gift law.

- (g) For the purposes of this section, "gift" shall refer to 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...

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, reporting any gift in excess of \$100 unless one of several exceptions apply. If accepted to the MBA degree program, City employees are not prohibited from accepting the FIU scholarship offered to them based upon their employment with the City of West Palm Beach. For those employees who chose to take advantage of the tuition discount, the \$10,000 value of the scholarship must be reported on their annual gift reporting form.¹

Under the facts and circumstances presented by the City, employees' family members are also eligible to receive the \$10,000 tuition discount. The Florida Administrative Code 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.² As is the case here, where scholarship eligibility is contingent upon a spouse's or parent's public employment, scholarship funds provided to a spouse or child are considered an indirect gift to the public employee.³ Therefore, these scholarships must also be included on an employee's annual gift reporting form.

In addition to the reporting requirement discussed above, no employee may take, fail to take or influence other to take or fail to take any official action in exchange for the scholarships provided by FIU.⁴

IN SUMMARY, based on the information that you have provided, City employees and their relatives are not prohibited from accepting scholarships from FIU so long as there is no quid pro quo or special

¹ Compare RQO 12-002, RQO 11-106 (attendance at educational or governmental *conference or seminars* as compared to a degree program where attendance was for governmental purposes, related to an employee's official duties and responsibilities as determined by employee's supervisor).

² In addressing the gift law requirements, the Commission on Ethics adheres to the Florida state standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code.

³ Compare RQO 11-057 (scholarships available to all residents of the Town are not contingent on public employment and therefore, do not constitute indirect gifts to the public employee parent); See RQO 11-079 (where scholarship eligibility is contingent upon a parent's public employment, scholarship funds provided to a child are considered an indirect gift to the parent).

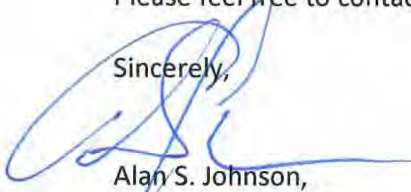
⁴ Sec. 2-444(e)

treatment or privileges given to either organization in exchange for offering these scholarships. In addition, should the value of these scholarships exceed \$100 they must be reported as required by the Code of Ethics.

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