



Palm Beach County Commission on Ethics

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March 21, 2012

Vince Bonvento, Assistant County Administrator
Department of Public Safety
Division of Emergency Management
20 S. Military Trail
West Palm Beach, FL 33415

Re: RQO 12-019
Prohibited Conduct

Dear Mr. Bonvento,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion. The opinion rendered is as follows.

YOU ASKED in your letter dated February 27, 2012, whether hosting a software program, available at no cost to Palm Beach County and for the benefit of the Emergency Operations Department ("EOD"), violates the Palm Beach County Code of Ethics.

IN SUM, the code of ethics does not prohibit a county department from using a free software program that is available to any governmental entity, corporation or other institution without a fee. The COE cannot opine as to internal county or departmental policy and procedure regarding such an arrangement.

THE FACTS as we understand them are as follows:

Several years ago the Division of Emergency Management (DEM) began using a web application called "Moodle." Moodle, an abbreviation for Modular Object-Oriented Dynamic Learning Environment, is an open source, free to use e-learning software platform. It is a learning management service which allows DEM to provide computer-based training to staff. All learning and testing content is created internally by the department and applied to this platform.

The basic version currently in use by the DEM is available free of charge to any user, including for-profit companies and governmental entities. 911 Coordinator Dan Koenig contacted Moodle to ensure that DEM's use of the software was appropriate. Moodle partner/manager Michael Blake responded "No problem using Moodle for the purpose you outline. Moodle sounds like the right tool for you." Programs with similar capabilities such as the "Blackboard" learning system would cost the department upwards of \$7,000. There are other versions of Moodle which upgrade the capabilities of the software or provide additional features which are available for a fee, none of which upgrades are required by the county at this time.

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

The Code prohibits an employee or official, and certain related persons or entities, from specially financially benefiting from an official action.¹ Under the facts you have submitted, there is no personal special financial benefit to DEM employees by the county using this free training software platform.

Corrupt misuse of official position² extends the prohibition against using one's official position for financial benefit to *any benefit*, financial or otherwise, if done with wrongful intent, inconsistent with the proper performance of the employee's duties. Under the facts presented here, there is no indication that use of this free software by employees of the county, available to any corporate or governmental entity, is corrupt or inconsistent with the proper performance of an employee's public duties. That being said, should a county employee misrepresent or use their official position to gain some benefit for the county where the county is ineligible to receive that benefit, such as using a "home version" or non-commercial or unauthorized version of software, such use of one's official position may potentially be considered to be inconsistent with the proper performance of one's public duties.

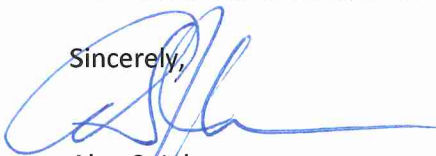
Lastly, although the use of free software could be considered a gift as that term is defined under the code³, the definition of gift excludes *gifts solicited or accepted by county employees on behalf of the county in performance of their official duties for use solely by the county for a public purpose*. The use of the Moodle platform by the county is a public use. So long as no special benefit is obtained by employees, this exception applies and the free software would not be considered a gift.

IN SUMMARY, under the facts you have submitted, the Palm Beach County Code of Ethics does not prohibit a county department, through its employees, from taking advantage of free software available to corporate, government and home users alike. The COE cannot opine as to any internal county policy or procedure regarding this use.

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

¹ §2-443(a)

² §2-443(c)

³ §2-444(g) "...gift shall refer to the transfer of anything of economic value..."