

# Palm Beach County Commission on Ethics

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March 16, 2012

Wally Majors, Director  
Boynton Beach Parks and Recreation Department  
P.O. Box 310  
Boynton Beach, FL 33425-0310

Re: RQO 12-021  
Gift Law

Dear Mr. Majors,

Your request for advisory opinion from the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in an email dated February 6, 2012 whether giving resident-only public facilities discounts or other resident privileges to employees of the City of Boynton Beach (the City) who are not City residents violates the Code of Ethics.

IN SUM, the Code of Ethics does not prohibit a public employer from offering its non-resident employees enhanced access to public facilities and reduced fees for such access. Depending upon the facts and circumstances, if the value of the discount received by an employee exceeds \$100, it may be a reportable gift.

THE FACTS as we understand them are as follows:

You are the Director of the City of Boynton Beach Recreation and Parks Department. Until 2010 the City allowed City employees that were not residents of the City to purchase parking permits for the municipal beach area (Oceanfront Park) at the City resident rate. Non-residents of the City generally pay a fee twenty-five percent (25%) higher than residents for these permits. Further, non-resident City employees had been allowed to purchase these parking permits at the same time as City residents, which was earlier than non-residents. Parking permits are limited. There are 260 parking spots at Oceanfront Park.

According to City Ordinance 16-82, which governs parking permits for the municipal beach, "All city employees, classified, nonclassified and retired, regardless of residency, shall be eligible to receive one (1) parking permit." Notwithstanding this ordinance, in 2010 the City ended the availability of parking permits for non-resident City employees, although the City ordinance itself remained unchanged. The City is interested in reinstating this benefit, but is concerned that it may violate the Code of Ethics.

THE LEGAL BASIS for the commission's opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

The Palm Beach County Code of Ethics does not prohibit a public employer from extending preferred access to its recreational facilities to non-resident employees, or doing so at a reduced cost. The following portions of the Gift law section of the Code are relevant to this analysis:

Section 2-444. *Gift law:*

- (f) Gift reports. Any official or employee who receives a *gift* in excess of one hundred dollars (\$100) shall report that gift in accordance with this section. (Emphasis added)
- (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. (Emphasis added)

Section 2-444(f), requires that any gift valued at greater than \$100 be reported in accordance with this section. Depending upon the facts and circumstances, a benefit received from an employer may or may not be considered a gift. For example, when a benefit is part of an employee's compensation, employment would be considered as lawful and adequate consideration for the benefit.<sup>1</sup> However, if there is no clear nexus to an employee's employment or compensation package, the benefit may constitute a gift and is therefore subject to transparent reporting requirements.<sup>2</sup>

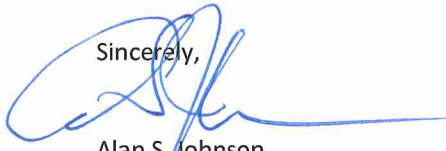
Based upon the facts and circumstances presented, it does not appear that these benefits are part of a non-resident employee compensation package and are therefore reportable should the value of the benefit exceed \$100. If the benefit received does not exceed \$100, it is not reportable.

IN SUMMARY, the City of Boynton Beach is not prohibited under the Code of Ethics from offering a benefit to its non-resident employees, such as reduced fees or special access for parking at its municipal beach, otherwise only available to City residents. If the value of the benefit received by an employee exceeds \$100, it would be a reportable gift under the facts you have submitted.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law or local municipal ordinance. 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

<sup>1</sup> RQO 11-028 (tips, when ordinary and customary compensation for public employee are not considered gifts), RQO 11-022 (free or reduced airfare to employees and their families considered part of the airline employees' employment compensation, and thus not a gift under the Gift law.)

<sup>2</sup> RQO 11-021 (tickets to VIP area), RQO 11-069 (concert tickets)