



# Palm Beach County Commission on Ethics

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## **Executive Director**

Alan S. Johnson

April 6, 2012

Commissioner Jess Santamaria  
Palm Beach County Board of County Commissioners  
301 North Olive Avenue, 12<sup>th</sup> Floor  
West Palm Beach, FL 33401

Re: RQO 12-022  
Voting Conflicts

Dear Commissioner Santamaria,

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

YOU ASKED in your letter of March 26, 2012, whether a County Commissioner whose outside business provides rental space to a municipality may participate and vote on inter-local agreements, annexation issues and lawsuits between the county government he serves and his municipal customer or client.

IN SUM, Officials whose outside business or employer contracts with other governments are not prohibited from voting on issues between their government-client and the government they serve, provided that the matter is unrelated to their business relationship with the government-client. However, voting on issues that may result in a special financial benefit to their outside employer or business would violate the misuse of office provisions of the Palm Beach County Code of Ethics.

When presented with a situation that would benefit themselves, or their outside employer or business, an official must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process.

THE FACTS as we understand them are as follows:

You are a Palm Beach County Commissioner. In addition, you are a partner in a business that leases space to the Village of Wellington (the Village). The amount of lease payments exceeds \$10,000 over a 24 month period, and as such, makes the Village a customer or client of your outside business. The lease with the Village extends through March 31, 2014.

In your capacity as County Commissioner, issues arise involving municipalities within the county. Currently, the Village is seeking to annex two parcels of property owned by Palm Beach County. The Village is the only municipality with contiguous boundaries, and therefore, is the only municipality that is in a position to annex the County property.

The parcels to be annexed are located within the boundaries of a larger conceptual project, known as the Medical Arts District (the District), being advanced by the Village. The District, still in its conceptual planning stage, requires the consolidation of nine separate properties totaling approximately 210 acres. In advancing the District, the Village has sought traffic concurrency approvals from the County in the past and will likely do so in the future.

Additionally, the Village is currently involved in a lawsuit filed against the County, seeking to invalidate the payment allocation portions of the Inspector General Ordinance. The Board of County Commissioners will likely need to vote on issues involving settlement and other negotiations involved in this ongoing lawsuit.

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

Section-2-443(a) prohibits officials and employees from using their official position to give themselves, their outside business, or a customer or client of their outside business a financial benefit, in a manner which they *know or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public*. While §2-442 exempts governmental entities from the definition of outside employer or business, no such exemption exists within the definition of customer or client. A customer or client is defined as a person or entity to which an employee or official's outside business has supplied goods or services in excess of \$10,000 over the previous 24 months. Therefore, the Village is a customer or client of the Commissioner's real estate business.

Section 2-443(c) similarly prohibits officials from voting on an issue or participating in a manner that would result in a special financial benefit attributable to themselves, their outside business or a customer or client as previously described. Essentially, the voting conflict section addresses the scenario whereby an official would violate the misuse of office prohibitions of the code by voting. In such a scenario officials are required to 1) disclose the nature of their conflict before the Council discusses the issue; 2) abstain from any discussion or vote and not participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the board, council or commission clerk and the Palm Beach County COE.<sup>1</sup>

The plain language of the code requires abstention when a vote would result in a *special financial benefit* to any of the enumerated persons or entities. This issue was previously addressed by the COE in regard to a municipal elected official whose outside business provided services to the County.<sup>2</sup> In that scenario, the issue of a special financial benefit turned on whether the financial benefit was shared with similarly situated members of the general public. While Palm Beach County was a customer or client of the Councilperson's outside business or employer, the COE decided that voting on matters unrelated to her outside business but benefiting the County would not result in a special financial benefit to her public customer or client, as a government entity represents all residents within its political boundaries. Since any benefit or loss obtained by the County would apply to all residents of the County, the financial benefit, should one exist, rests universally with all residents of Palm Beach County. A prohibited financial benefit would have resulted only if there were circumstances unique to the Councilperson

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<sup>1</sup> §2-443(c)

<sup>2</sup> RQO 11-092

which would enable her, her husband or his or her outside business or employer to gain more than other county residents.

Likewise, in this instance, a benefit to the Village which is shared equally among all Village residents, and not uniquely beneficial to the Commissioner, or his outside business, would not constitute a special financial benefit, in violation of the Code. The Commission on Ethics cannot opine on speculative matters not inherent in the facts presented. For example, should the Village be in active competition with other municipalities on an issue that would specially benefit the Village over other competing entities, there may present a circumstance whereby the Village could potentially receive a special benefit not available to similarly situated municipalities within the county. It is recommended that you submit a separate request for opinion if such a factual circumstance were to arise.

IN SUMMARY, based on the facts you have submitted, you are not prohibited from voting on issues involving the annexation of county property or other development issues involving the District where the Village is the only municipality with boundaries contiguous to the property and the Village itself is not specially financially benefited in a manner unlike similarly situated entities in the county, so long as the decision does not give a special financial benefit to you personally, or your outside business.

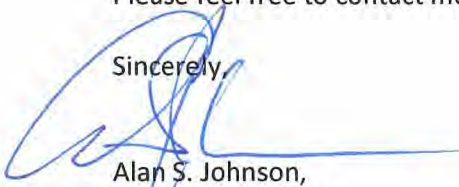
In addition, your actions regarding the Inspector General lawsuit are in the context of a countywide lawsuit involving 15 municipalities. As such, County Commission decisions would likewise not present a special financial benefit to the Village.

When presented with a situation that would result in a special financial benefit for you or your outside business, you must publicly disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process.<sup>3</sup>

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

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<sup>3</sup> Sec. 2-442 definitions exclude a government entity from the definition of *outside employer*. Where an official's outside employer is another government entity sec. 2-443(4) does not apply. RQO 10-026, RQO 11-036 OE, RQO 11-045