



# Palm Beach County Commission on Ethics

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April 6, 2012

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

Re: RQO 12-023  
Testimonial Fundraising

Dear Commissioner Aaronson,

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

YOU ASKED in your email of March 26, 2012, whether the revised Code of Ethics permits you to be an honoree at nonprofit fundraising events.

IN SUM, testimonial functions, held as a fundraiser honoring a public servant, do not violate §2-443 of the Code of Ethics (misuse of public office) except under limited circumstances wherein the honoree, spouse or domestic partner is an officer or director of the organization or the covered honoree otherwise uses his or her official position to obtain a special financial benefit.

The Code of Ethics prohibits the solicitation or acceptance of a gift in excess of \$100 annually in the aggregate, from a vendor, lobbyist, principal or employer of a lobbyist, unless a transparent solicitation log is maintained and submitted as specified in §2-444(h). This prohibition extends, directly or indirectly, to the public official, *or any other person or business entity on his or her behalf.*

Lastly, great care must be taken that all state statutes are adhered to, including strict requirements involving registration and disclosure.

THE FACTS as we understand them are as follows:

You have been a sitting Palm Beach County Commissioner since 1993 and your current term ends in January, 2013. Your position is term limited and you are not seeking re-election. A number of nonprofit organizations have asked to hold events in your honor "as a show of appreciation for my many years in service as a County Commissioner." These events are fundraisers for the nonprofit organizations. You will not serve as chairman or honorary chairman for any fundraising activities on behalf of these organizations and, other than your name appearing on the invitations, you will not "participate in any way in any fundraising activities connected to these events." Additionally, you are neither an officer nor director of any of these nonprofit organizations.

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THE LEGAL BASIS for the allowance of testimonial fund raisers for charitable or religious organizations, provided the honoree or spouse/domestic partner is not an officer or director, is found in the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-443(a) prohibits a public official from using his or her official position to financially benefit, in a manner not shared with similarly situated members of the general public, *a nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.* Since neither you nor your spouse is an officer or director of any of the organizations in question, the above prohibition does not apply. Section 2-443(b) prohibits any corrupt arrangement whereby an official uses his or her office "with a wrongful intent...which is inconsistent with the proper performance of his or her public duties." Therefore, you may not use your official position to benefit donors as a *quid pro quo* based upon contributions or donations to these charitable events.

Previously, the Commission on Ethics (COE) opined that §2-444(a) of the gift law prohibited the acceptance of gifts in excess of \$100, annually in the aggregate, from a vendor, lobbyist or principal or employer of a lobbyist at these charitable events, where the solicitation or acceptance is by the official, directly or indirectly, *or any other person or business entity on his or her behalf.*<sup>1</sup> Subsequently, the Code of Ethics has been revised.

According to section 2-444(h)1 of the revised Code of Ethics, solicitations may be made by a *non-profit charitable organization, as defined under the Internal Revenue Code,* on behalf of a public official, provided a detailed log is maintained of *all donations* from vendors, lobbyists, principals and employers of lobbyists of that official's governmental entity, or board or department in the case of advisory board members, and the log is submitted within 30 days of the event to the Commission on Ethics. No public resources may be used in these solicitations and *no person or entity with a pending application for approval or award of any nature before the County* may be solicited.<sup>2</sup>

You have maintained that you do not intend to solicit directly on behalf of any of these organizations, but they will be using your name and your public title on the invitation and in promotion of the event. Anything that you are authorized to do directly may also be done on your behalf. Therefore, IRS recognized charitable organizations are permitted to solicit vendors and lobbyists using your name, but it must keep a log of *all solicitations and donations* from these persons or entities, and submit the log accordingly. The code revision was intended to allow members of the community, who are also elected officials, advisory board members, or municipal or county employees to solicit on behalf of religious, civic or other charitable organizations while maintaining appropriate transparency.

THE RATIONALE for limiting the manner of solicitations and donations is grounded in the desire to avoid the appearance that these solicitations and donations are made to obtain access or otherwise ingratiate the soliciting party to the honoree. As we previously noted in RQO 10-004:

"...in soliciting donations, it is not unusual for the charitable entity to sell advertising in a journal or other honorary publication as well as soliciting a business entity for the purchase of multiple tickets at significant cost. State ethics statutes prohibiting solicitation of gifts from lobbyists specifically exclude lobbyist gifts accepted on behalf of a governmental entity *or charitable*

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<sup>1</sup> RQO 10-004 (testimonial event)

<sup>2</sup> RQO 11-041, RQO 11-075

*organization*<sup>3</sup>, and maintain strict reporting requirements; however, no such exclusion for charitable organizations or other limiting language appears in the Palm Beach County Code of Ethics.”

In this instance, you have made clear that you will not personally take part in any solicitation. Additionally, as previously noted, the Code of Ethics has been revised to permit such solicitations provided the logging process is followed. To that extent, RQO 10-004 is modified in accordance with the revisions contained in §2-444(h).

Albeit not within the jurisdiction of the Palm Beach County Code of Ethics, there is one more consideration that you will need to address. The following is contained in RQO 10-004 and remains current state law.

Section 111.012, Florida Statutes (2010) (Testimonials for public officers) states that strict records keeping must be maintained for any testimonial, including “any breakfast, dinner, luncheon, rally, party, reception, or other affair held to honor or raise funds on behalf of any elected public officer, except a campaign fund raiser...” Florida law requires that any organization hosting such a fundraiser for a locally elected official file a notice of intent with the supervisor of elections, set up a “testimonial account...in a depository” and appoint a treasurer before any money can be accepted.

Detailed information regarding all donations and other activity within the depository account must be maintained by the treasurer. Notice of the testimonial must provide “the date and place the testimonial is to be held, the name and address of the person or persons in charge of the testimonial, the name and address of the officer in whose honor or on whose behalf the testimonial is to be held, the purpose for which the testimonial is to be held, and the purpose for which the funds raised are to be used.”

The state statute further requires a report be filed by the organization with the local elections supervisor by the person in charge within 90 days after the date the testimonial is held. Each report must contain the following information: the full name and address of each person who purchases one or more tickets or gives any money or donation with respect to such testimonial, together with the amount and date of the donation; a detailed list of entities receiving payment for expenses or entities receiving charitable funds. Lastly, violation of s. 111.012 by “any person or officer who holds a testimonial, or who consents to a testimonial being held...” or “who fails to dispose of the funds in the manner provided...” by statute is guilty of a first degree misdemeanor.

IN SUMMARY, the Palm Beach County Code of Ethics does not prohibit you from being honored by non-profit organizations as part of a fundraising event, provided the organization is recognized as a charitable non-profit organization as defined under the Internal Revenue Code, and complies with the transparency requirements and limitations contained in the revised Code of Ethics. Although you will not personally solicit or accept donations for these events, a solicitation log must be maintained by the

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<sup>3</sup> “A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a...lobbyist who lobbies the reporting individual’s or procurement employee’s agency...if he or she knows or reasonably believes that the gift has a value in excess of \$100: however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization...” F.S. 112.3148 (4)

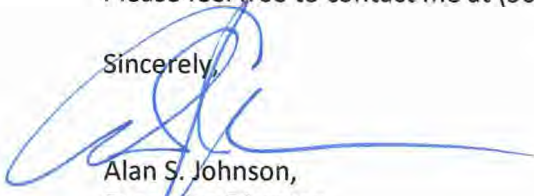
organization, including any solicitation or donation made of or by a vendor, lobbyist, principal or employer of a lobbyist who does business with Palm Beach County government.

Additionally, you must be mindful of any requirements and limitations imposed under §111.012, Florida Statutes, regarding testimonial reporting under state law.

This opinion construes the revised Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inclusion of §111.012, Florida Statutes, in this opinion is for informational purposes so that you, and the requesting non-profit organizations avoid any violation of state criminal law. Inquiries regarding possible conflicts or requirements under state law should be directed to the State of Florida Commission on Ethics or the Attorney General.

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