

Palm Beach County Commission on Ethics

Commissioners

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May 4, 2012

Suzanne Mulvehill, Commissioner
City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460-3787

Re: RQO 12-027
Conflict of Interest

Dear Commissioner Mulvehill,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on May 3, 2012.

YOU ASKED in your email submission dated March 30, 2012, whether as a Commissioner of the City of Lake Worth (the City), you can meet with a vendor of the City to assist their development as a small business in the context of your position as a Certified Business Analyst for the Small Business Development Center (SBDC) at Palm Beach State College (PBSC) and whether such a meeting will result in a conflict of interest should this company appear before the City Commission in the future.

IN SUM, while the financial misuse of office section of the Code of Ethics prohibits you from using your official position to specially financially benefit yourself, your outside business or employer or a customer or client of your outside business or employer, the code specifically excludes other government entities in the definition of outside employer. PBSC does not constitute an outside employer as defined by the code. By extension, the small business in question is a client of PBSC, a government entity. It does not qualify as a customer or client of your outside employer for purposes of financial misuse of office. Therefore, unless there is a special financial benefit to you personally, or a corrupt use of your position for your personal benefit or the benefit of others, inconsistent with the proper performance of your office, the code does not prohibit you from assisting the small business, a current vendor of the City.

While there may be no per se prohibited conflict of interest created under the Code of Ethics, even where the small business is a current or potential future vendor of the City, there may be an appearance of impropriety, especially if the small business vendor appears before you in the future.

THE FACTS as we understand them are as follows:

You are a Commissioner of the City of Lake Worth (the City). Currently you have a position as a Small Business Development Consultant at Palm Beach State College (PBSC). Previously, the Commission on Ethics (COE) issued an opinion on your ability to be employed by PBSC and serve as City Commissioner.¹ The facts, unchanged from the initial opinion, are as follows:

Palm Beach State College is the host institution for the Small Business Development Center (SBDC), a governmental entity funded in part through a cooperative agreement with the U.S. Small Business Administration. The SBDC

¹ RQO 11-031 OE

provides free counseling, advice and seminars to small business owners throughout the region. The SBDC at PBSC sets and provides your salary. Your position entails, among other things, providing one-on-one counseling to small or medium size enterprises (SME), contacting SME's in the region and recruiting SME's for the SBDC's growth acceleration program, and attending business events on behalf of the SBDC. From time to time, businesses that operate in the City may come to the SBDC to request your advice and businesses that you have counseled may appear before you as a member of the City of Lake Worth Commission. Lake Worth employs a sealed, competitive bid process, at the completion of which staff presents the top five bids to the Commission including the low bid. The City Commission has discretion to select from among those bids.

Currently, you are working on behalf of SBDC with business owners in Boca Raton, Jupiter and North Lauderdale. You were referred to assist a street sweeping company. The owner/manager of this company advised that it had a current contract with the City. You were not aware of this contract and do not recall if you had previously voted on the contract or whether it pre-dated your position on the Commission. You have an appointment scheduled to counsel this company on their business growth. Your meeting is in the context of your SBDC position to provide one-on-one counseling to small and medium size enterprises (SME). This is a free service to the company through the PBSC program.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

The code defines *outside employer* in sec. 2-442

Outside employer or business includes:

Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. (emphasis added)

The definition of *outside employer or business*, specifically excludes "county, state, or any other federal regional, local or municipal government entity." The Palm Beach County Commission on Ethics has previously addressed whether a state college or university is a government entity under the code.² §1001.60, Florida Statutes, establishes the Florida College system. As one of 28 public colleges in the State of Florida, PBSC is, therefore, considered a governmental entity. As a result, you are not prohibited from accepting employment with PBSC even though PBSC maintains contracts with Lake Worth.

The SME that you will be assisting is a vendor of the City and may appear before the City for future contracts for services.

The following sections of the code address that potential conflict.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows 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, for any of the following persons or entities:
- (1) Himself or herself;
 - (2) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;

² RQO 10-028-OE, RQO 10-037-OE, RQO 11-026

This Commission has previously opined on the issue of whether your relationship with PBSC and its clients presents a financial misuse of office.

Neither the PBSC, nor SBDC clients fall under the prohibitions of the misuse of public position section of the code as an outside business, employer or customer or client. Not only is your employer a government entity and thus exempt from the definition of *outside employer*, but the services of SBDC are free to the public. Therefore, the businesses you contact or advise on behalf of the SBDC are not *customers* or *clients* as defined by the code of ethics. Notwithstanding these exemptions, you may not use your official position to gain a special financial benefit for yourself.³

Section 2-443(b) prohibits corrupt use of office. The prohibition extends to any benefit for yourself or anyone else and requires a wrongful intent that is inconsistent with the proper performance of your official duties and obligations to the City. Therefore, you may not use your official position to corruptly give a benefit to the SME or obtain a benefit for yourself as a *quid pro quo* in exchange for an official act.

The Commission on Ethics normally would not opine as to whether, in order to prevent the appearance of impropriety, you should either refrain from counseling the SME vendor of the City, or in the alternative, abstain and not participate in any future issues that may come before the City Commission involving the counseled company. While the relationship may not constitute a prohibited conflict under the Code of Ethics, it does create a strong appearance of impropriety.⁴ This is especially true if the official acts are of a discretionary nature.⁵

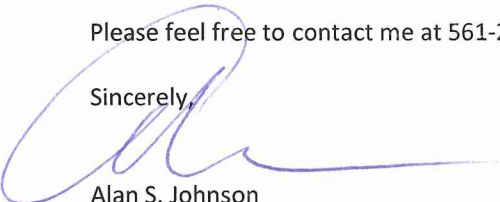
IN SUMMARY, you are not prohibited from counseling an SME vendor of the City in your capacity as growth acceleration program consultant with the Small Business Development Center at Palm Beach State College provided you do not use your official position to corruptly benefit yourself or the SME or otherwise use your official position to financially benefit yourself.

However, the COE is of the opinion that counseling the SME may result in an appearance of impropriety if you participate or vote on an issue should the company appear before the City Commission in the future.

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 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/gal

³ RQO 11-031 OE

⁴ §2-441 Title; statement of purpose (“...Officials...shall act and conduct themselves so as not to give occasion for distrust of their impartiality”), Art. V, Division 8, §2-260.9. Advisory opinion. (“...to establish a standard of public duty, if any), Section 2.8(f), COE Rules of Procedure (“If deemed appropriate by the COE, additional comment regarding ethics, appearance of impropriety or similar advice to the requesting party based upon the factual scenario as presented.”)

⁵ RQO 11-037 (Building official reviewing work approved by his sibling’s company as private resident inspector)