



Palm Beach County Commission on Ethics

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April 11, 2012

Thomas Carney, Vice-Mayor
100 N.W. First Avenue
Delray Beach, FL 33444

Re: RQO 12-028
Charitable Solicitation

Dear Vice-Mayor Carney,

Your request for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your e-mail of Thursday, April 5, 2011 whether you, as an elected official in Delray Beach, may participate in a fundraising event for the benefit of the Delray Beach Public Library Association, Inc., a 501 (c)(3) non-profit organization.

IN SUM, the Code of Ethics does not prohibit elected officials from participating and using their official title in charitable fundraising events, provided neither they nor their spouse or domestic partner is an officer or director of the organization. Any solicitation or acceptance of donations in excess of \$100 from a person they know, or should know with the exercise of reasonable care, is a vendor, lobbyist, principal or employer of a lobbyist of their municipal government, must be transparently recorded and submitted in accordance with the charitable solicitation requirements of the code.

THE FACTS as we understand them are as follows:

Unlike most public libraries that are operated through a combination of private and public funding, the Delray Beach Public Library (DBPL) is funded solely through charitable giving and is a 501 (c)(3) non-profit organization. One of its annual fundraising events is called "Dine Out for a Cause" (the Event). The Sundry House of Delray Beach has offered to host the Event and has agreed to donate 20% of the restaurant's gross receipts collected between 6-9pm on the evening of July 26th, 2012 to the DBPL. The 20% donation will not be calculated per patron, bill or per table, but will be determined at the end of the evening by the restaurant from total gross receipts.

As the Vice-Mayor of Delray Beach, the DBPL has asked you to participate in this event as a "celebrity chef."¹ Your name and official title will be on DBPL advertising materials and on the evening of the event you will greet patrons and speak with diners over the course of the evening. Neither you nor your spouse serves on the DBPL Board of Directors.

The Sundry House is not a vendor of Delray Beach (the City), however vendors and lobbyists of the City may attend the Event. While the main fundraising vehicle for the evening will be the 20% gross receipt contribution from the

¹ RQO 12-023 (revisions to the code of ethics permit an IRS recognized charitable organization to solicit vendors and lobbyists using an elected official's name and official title on the invitation and in promotion of the event provided the solicitation complies with transparency requirements of the revised code).

Sundy House, promotional materials for the DBPL will be available that evening and library staff will be available to answer questions and accept donations. You have requested an expedited response from the COE.²

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

Section 2-443(a), misuse of office, prohibits a public official or employee from specially financially benefiting a non-profit organization *of which he or she (or his or her spouse or domestic partner) is an officer or director*. You do not serve on the board of directors of the DBPL and therefore you are not prohibited from using your official title in the advertisement associated with the DBPL's upcoming event.³

Under the gift law provisions, §2-444(a) prohibits you from soliciting or accepting gifts worth more than \$100, annually in the aggregate, from a person or entity who you know or *should know with the exercise of reasonable care* is a vendor or lobbyist of the City. The revised Code of Ethics provides an exception to this prohibition allowing participation by officials and employees in charitable fundraising.⁴ This exception requires that you or anyone soliciting or accepting donations on your behalf maintain and submit a log of all solicitations or donations in excess of \$100 from vendors or lobbyists doing business with or lobbying the City. It should be noted that notwithstanding any other provision, you may never accept anything of value as a *quid pro quo* in exchange for an official act or the past, present or future performance of a legal duty.⁵

Again, the code requires that when a public official or employee solicits or lends their name to a solicitation by a 501(c)3 non-profit charitable organization, as defined under the Internal Revenue Code, that the official or the non-profit log all donations in excess of \$100 from vendors or lobbyists who the employee or *official knows or reasonably should know* does business with the official or employee's government. There is no bright line definition of reasonable care.⁶ Nor is there a requirement that you must undertake a particular level of scrutiny in order to determine whether a donation has been accepted from a vendor or lobbyist in relation to the solicitation by DBPL. A determination of whether or not an official or employee knows or should know of a vendor or lobbyist donation can only be made on a case by case basis, based on the facts and circumstances presented. Circumstantial evidence of knowledge is relevant; however, a violation may ultimately be sustained only by clear and convincing evidence that there was actual or constructive knowledge of the prohibited donation. As a practical matter, the Commission has previously determined that where a non-profit organization has reasonable protocols in place to capture and log otherwise prohibited gifts, an employee or official may act reasonably in reliance on these protocols.⁷

There are several fundraising scenarios that are at issue under the facts and circumstances presented by your question. First, there is the donation from the Sundy House of 20% of the proceeds from the evening's receipts. Insofar as the 20% donation from the Sundy House is from the restaurant itself and not from individual donors as the gift is not calculated per table or per receipt; the donation may be attributed to the Sundy House alone. That being said, the Commission on Ethics would recommend that in accord with the purpose and intent of the transparency provisions contained in the code of ethics, the DBLP include the following advisory on invitations to the event:

² Rule of Procedure 2.6 Expedited Responses. When the requesting party so indicates, and the facts support an expedited review of a request for advisory opinion, the Executive Director will confer with the COE Chairperson or Co-Chairperson to determine whether; to set the matter for review at the next scheduled meeting; to set a special meeting of the COE to review the request; or to have the Executive Director respond prior to the next regular meeting.

³ RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

⁴ Section 2-444(h), PBC Code of Ethics

⁵ Section 2-444(g), PBC Code of Ethics

⁶ RQO 11-099

⁷ RQO 11-075

If you are a vendor or lobbyist of the City of Delray Beach, please be advised that should your dining bill exceed \$500 you must notify a library staff member so that your donation may be recorded in compliance with the Palm Beach County Code of Ethics.

At the event, library staff would then record the vendor or lobbyist's donation in excess of \$100 (20% of \$500). A sample charitable solicitation log is available on the COE website.

Secondly, the DBPL does not anticipate soliciting or receiving individual donations at the event, however, patrons who are unable to attend may provide a donation in response to receiving the event invitation. Should donations attributable to individual persons and entities be accepted at the event or in advance of the event, compliance can be easily monitored by DBPL based upon a donor's written pledge or check. Library staff may inquire whether a donor is a vendor or lobbyist of Delray Beach, and if so, a donation in excess of \$100 *must* be recorded on the charitable solicitation log maintained by DBPL.

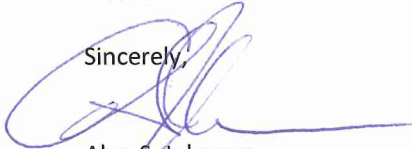
IN SUM, based on the facts you have submitted, you are not prohibited from serving as a "celebrity chef" to benefit the DBPL so long as individual gifts in excess of \$100 from vendors and lobbyists of the City are recorded as required by the Code of Ethics. A log of these gifts must be transmitted to the COE within 30 days of the event. The COE recommends that should an individual vendor or lobbyist of the City spend more than \$500 at the event, the 20% of his or her receipt representing the charitable donation should be separately logged and recorded by library staff to provide greater transparency in accordance with the purpose of the Code of Ethics.

In addition, you may never accept, directly or indirectly, a gift of any value as a *quid pro quo* or in exchange for the past, present or future performance of an official act or legal duty.

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