

Palm Beach County Commission on Ethics

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April 24, 2012

Ms. Martha Lee
301 N. Olive Avenue
West Palm Beach, FL 33401

Re: RQO 12-031
Misuse of Office

Dear Ms. Lee,

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

YOU ASKED in your email dated April 19, 2012, what your obligations, as a county employee, are under the Palm Beach County Code of Ethics, in addressing a personal financial dispute between yourself, Palm Beach County Workforce Alliance and Florida Atlantic University, where your county supervisor serves on the board of directors of Workforce Alliance.

IN SUM, as a county employee you are prohibited from using your official position directly or indirectly to give yourself a special financial benefit. In addition, you may not corruptly use your official position to obtain any benefit that is inconsistent with the proper performance of your public duties, for any person. This includes a prohibition on using your official title in discussions with FAU and Workforce Alliance, influencing others to intervene and using public resources, such as county email, to negotiate a resolution.

THE FACTS as we understand them are as follows:

You are an Administrative Assistant to a County Commissioner. Over 10 years ago, you received a tuition stipend from Palm Beach County Workforce Alliance (WA) to attend Florida Atlantic University (FAU). WA offers training scholarships designed to provide marketable job skills for applicants. These scholarship dollars are provided directly to the training organization, in this case FAU. Recently, you attempted to obtain your transcript from FAU. FAU denied your transcript request and alleged that you or WA on your behalf failed to pay for your final credit. You believe that WA is responsible for payment of this credit and may in fact have already paid the fee. Accordingly, you have been working with WA and FAU to resolve the situation. Throughout this process you have used personal time and your personal email. When a member of FAU staff contacted you via your county email, you informed him that all future correspondence must be directed to your personal email. You are concerned because your supervisor serves on the board of WA and accordingly, you do not want to use your position in any way that is inconsistent with the Code of Ethics.

THE LEGAL BASIS for this opinion is found in the following relevant section of the revised Palm Beach County Code of Ethics, which took effect June 1, 2011.

Sec. 2-443 Prohibited Conduct

- (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

As a County employee, you may not use your official position to give yourself "a special financial benefit, not shared with similarly situated members of the general public." Accordingly, when you are involved in a dispute with an organization, you may not use your official position or influence your supervisor to use their official position to remedy that dispute.

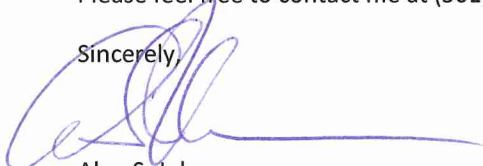
Additionally, §2-443(b), *Corrupt Misuse of Official Position*, prohibits you from using your official position, or any property or resource within your trust, to "corruptly" secure a special privilege, benefit, or exemption for yourself or others." Under the Code, the term "corruptly" means, "done with wrongful intent," and "inconsistent with the proper performance of his or her public duties." As an employee of Palm Beach County and assistant to a WA board member, you must take great care to not use your official position, and not influence your supervisor, to take or fail to take any action that will result in your receiving a special financial benefit. This may include, but is not limited to, correspondence using your official title and address, asking your supervisor to intervene in the dispute or otherwise invoking your position or the position of your supervisor in any aspect of this matter. Based on the facts you have submitted, you have taken care to separate your official position and that of your supervisor from the dispute and the COE strongly urges you to continue to keep all aspects of this matter separated from your official position.

IN SUMMARY, while the Code does not prohibit you from taking action in your personal capacity, you may not use your status as a Palm Beach County employee and Assistant to a WA board member to give yourself or influence others to give you a special financial benefit not available to similarly situated members of the public. Using or attempting to use your official position or the name of your county supervisor to influence or otherwise give yourself a special financial benefit would constitute a violation of the misuse of office section of the code.

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