



Agenda

October 6, 2011
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Executive Session from 2:15pm to 4:00pm Regular Agenda will being at 4:00pm

Palm Beach County
Commission on Ethics
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Commissioners

Edward Rodgers, Chair

Manuel Farach, Vice Chair

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

Executive Director

Alan S. Johnson

Executive Assistant

Gina A. Levesque

Staff Counsel

Megan C. Rogers

Senior Investigator

Mark E. Bannon

Investigator

James A. Poag

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from September 1, 2011
- V. Executive Session (2:15pm – 4:00pm)
 - a. C11-015
 - b. C11-016
 - c. C11-017
 - d. C11-018
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 11-057
 - b. RQO 11-062 (resubmitted)
 - c. RQO 11-063 (resubmitted)
 - d. RQO 11-069
 - e. RQO 11-075
 - f. RQO 11-077
 - g. RQO 11-078
 - h. RQO 11-079
 - i. RQO 11-080
 - j. RQO 11-082
 - k. RQO 11-083
 - l. RQO 11-086
 - m. RQO 11-087
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Public Safety Employee Programs for the Town of Palm Beach
 - a. RQO 11-056
 - b. RQO 11-081
- IX. City of Riviera Beach Discretionary Funds
 - a. RQO 11-084
- X. City of Boca Raton Advisory Board Conflicts
 - a. RQO 11-067
 - b. RQO 11-076
- XI. Proposed Advisory Opinions
 - a. RQO 11-054
 - b. RQO 11-085
 - c. RQO 11-088
- XII. Proposed change to Rule of Procedure 8.2
- XIII. Executive Director Comments
- XIV. Public Comments
- XV. Adjournment

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. CALL TO ORDER: September 1, 2011, at 1:38 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair
Robin N. Fiore, Ph.D
Ronald E. Harbison, CPA
Bruce E. Reinhart, Esq.

STAFF:

Mark E. Bannon, COE Investigator
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Administrative Assistant
Megan C. Rogers, Esq., COE Staff Counsel
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

Judge Edward Rodgers stated that there was a quorum.

III. INTRODUCTORY REMARKS

Judge Rodgers said that if anyone wished to speak, a comment card containing the agenda item should be filled out and submitted to a COE staff member. He added that public comment was limited to three minutes, and it should be relevant to the agenda item.

IV. APPROVAL OF MINUTES FROM AUGUST 4, 2011

MOTION to approve the August 4, 2011, minutes. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 5-0.

Commission on Ethics (COE) Executive Director Alan Johnson, Esq., introduced Ryan Watstein, a Palm Beach State College intern who, he said, would be working on some Web site mechanisms. He also welcomed the new COE investigator, James A. Poag.

V. GIFT, OUTSIDE EMPLOYMENT AND VOTING CONFLICT TRACKING APPLICATION (PRESENTED BY INFORMATION SYSTEMS SERVICES (ISS) DEPARTMENT)

Information Systems Services (ISS) Programmer Jacquelyn Anderson, in providing a presentation, stated that:

- The public search screen for gift application in the COE tracking system was currently in production.
- Two searches, an outside employment waiver and voting conflict, were added to the system.
- Users would log on to the COE Web site and click the appropriate application link.
- Gift search users would search by an employee's name, political subdivision, the department or unit, or the reporting year.
- Clicking "view file" would open a document attachment.
- The outside employment waiver module included a private employment and address search criteria.
- A search suggestion provided an idea of items included in the database.
- The voting conflict search module's search options were identical to the gift module's options.
- A global search of the database could be accessed through the ethics search link.

Mr. Johnson stated that for purposes of voting conflicts and the gift law, the database involved the County, the 38 municipalities, and all others under the COE's jurisdiction.

(CLERK'S NOTE: Items VI. and VII. were discussed in tandem.)

VI. MEMORANDUM OF UNDERSTANDING WITH BOCA RATON AIRPORT AUTHORITY

VII. MEMORANDUM OF UNDERSTANDING WITH LAKE WORTH COMMUNITY REDEVELOPMENT AGENCY (CRA)

VI. AND VII. – CONTINUED

Mr. Johnson stated that:

- The COE was in the process of entering into memorandums of understanding (MOU) with the City of Boca Raton (Boca Raton) Airport Authority and the City of Lake Worth (Lake Worth) CRA.
- The Children's Services Council was also interested in entering into an MOU with the COE.
- The Boca Raton Airport Authority MOU would go before the Board of County Commissioners (BCC) on September 13, 2011, and the Lake Worth CRA MOU sometime in October 2011.
- Staff had vetted and developed the MOUs prior to the referendum to bring the municipalities under the COE's jurisdiction.
- The MOUs contained an option for the contracting party to choose either an hourly or a per-event fee paid to the COE.
- The collected fees would go into the County's budget to be earmarked for the COE. The COE would bill for the fees, which would be entered into the COE's budget line as income.
- Staff was currently developing a mechanism to track hourly fees if an entity chose that option.

Commission on Ethics Executive Assistant Gina Levesque pointed out that:

- Staff was working with ISS to review ISS' timekeeping system.
- The ISS' timekeeping system was similar to that of the Office of the Inspector General except that the ISS' system was project based.
- The ISS' staff was adapting their timekeeping system to the COE's needs, and the process should be completed in January 2012.

Mr. Johnson stated that the COE needed a consistent timekeeping system with all MOUs and all independent authorities that contracted with the COE. He added that the hourly fee rates were based on staff's hourly pay.

(CLERK'S NOTE: Bruce Reinhart left the meeting.)

VIII. RULES OF PROCEDURE REVISION

Mr. Johnson stated that:

- He and COE Staff Counsel Megan Rogers had reviewed the rules of procedure regarding updates due to the June 1, 2011, ordinance change.
- After the ordinance change, multiple jurisdictional time periods were established for the County and the municipalities.
 - The County came under the Code of Ethics (Code) and the COE on May 1, 2010, and the municipalities came under the Code and the COE on June 1, 2011.
 - Other taxing entities and possibly constitutional officers may come under the COE's jurisdiction in ensuing years, and the effective dates would be the contract dates.
- Regarding the ordinance's Preliminary Investigations, section 4.1., Staff Procedures Upon Receipt of a Complaint, notification to the Respondent upon a preliminary finding of legal sufficiency was changed from 30 days to 20 days.
- The County's Ethics Ordinances Drafting Committee (EODC) amended section 4.4., Preliminary Investigations, requiring that the COE set a public hearing regarding probable cause within 120 days of a determination rather than leaving it to the respondent to ask that a final hearing be set.
- The COE had rules of procedure that allowed resolutions to be ratified by the COE if the advocate and the respondent agreed on how to resolve the complaint.
- Probable Cause Determination, section 5.9, Setting of Public Hearing, restated that the final hearing should be set by the COE within 120 days.
- Regarding Public Hearings, section 6.4, Disqualification of Commissioners, staff recommended that COE members may – and not shall – be disqualified from sitting at probable cause hearings or final public hearings for bias, prejudice, or interest by a motion of the respondent or advocate but not by the complainant.
 - The motion would be heard by the COE, with the COE member disqualifying himself or herself.

VIII. – CONTINUED

- Commission on Ethics members could refuse to recuse themselves.
- Using the word, shall, would require COE members to recuse themselves with or without a legal basis for disqualification.
- Since State Statute 286.012 required that language, the word, may, should be changed to the word, shall, in the sentence: A member may disqualify him or herself because of financial interest.

PUBLIC COMMENT: Alexandria Larson.

Judge Rodgers clarified that a judge was not required to recuse himself or herself. He stated that he supported using the word, shall, in the first sentence of section 6.4.a, because it was appealable.

Dr. Robin Fiore commented that she supported using the word, may, in the first sentence of section 6.4.a, and using the word, shall, in the second sentence of section 6.4.a.

Mr. Farach stated that:

- The COE had attempted to adopt an appearance of impropriety standard for recusals on several occasions, and the Florida COE and the Florida Attorney General informed the COE that it could not be done.
- The word, may, should remain in the first sentence of section 6.4.a; and the word, shall, should be used in second sentence of section 6.4.a.

MOTION to approve the rules of procedure amendments, as amended, to include changing the word, may, to the word, shall, in the second sentence of 6.4.a. Motion by Manuel Farach.

Mr. Johnson suggested discussing the last two sections in the rules of procedure amendments before making a motion to include the changes to 6.4.a.

MOTION DIED FOR LACK OF A SECOND.

VIII. – CONTINUED

Mr. Johnson stated that:

- Regarding Penalty, section 8.1.b, Finding and Public Report, the language was revised since an automatic hearing would be set within 120 days, and it was unnecessary to require that the respondent request a public hearing.
- Regarding section 8.2, Order Upon Finding of Violation, the EODC included a second standard by adding the language, by clear and convincing evidence, to the EODC's standard of basing a conviction at a public hearing upon competent, substantial evidence.
- The COE could withdraw any advisory opinions.
 - Regardless of whether a complainant withdrew a complaint, if a violation occurred, the COE would file a self-initiated complaint.
 - In most cases, the COE found no legal sufficiency to a complaint based on anonymous and unsworn information.
 - An occasion had not arisen where a complaint was withdrawn before the COE staff had reviewed it and had made a determination whether there was legal sufficiency.
 - If a complainant filed a complaint and realized that the grievance should be against someone else, staff would vet the issue before it reached the COE, and there would no legal sufficiency.

Ronald Harbison commented that he would be reluctant to put a procedure in place that prevented the COE from speaking to someone to obtain additional information.

Mr. Johnson said that respondents were informed that his office and the COE could not force them to come in and provide information regarding complaints.

Mr. Farach suggested modifying section 8.2.a. He said that the language appeared to have two different standards of evidence, and he did not want the current language to become a future issue.

VIII. – CONTINUED

Discussion ensued regarding section 8.2.'s language, and Mr. Johnson said that staff recommended removing section 8.2., pending review and resubmission of the language at the October 2011 COE meeting.

MOTION to approve the rules of procedure amendments, as amended, to include changing the word, may, to the word, shall, in the second sentence of 6.4.a, and to remove section 8.2. Motion by Manuel Farach, and seconded by Robin Fiore.

Mr. Johnson clarified that staff now recommended replacing the word, may, with the word, shall, in section 6.4.a's last sentence.

AMENDED MOTION to include replacing the word, may, with the word, shall, in the last sentence of section 6.4.a. The maker and the seconder agreed, and the motion carried 4-0. Bruce Reinhart absent.

IX. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

IX.a. REQUEST FOR ADVISORY OPINION (RQO) 11-049

IX.b. RQO 11-063

IX.c. RQO 11-065

IX.d. RQO 11-070

IX.e. RQO 11-071

IX.f. RQO 11-073

Mr. Johnson stated that RQO 11-049 and RQO 11-071 contained minor typographical errors that did not affect the language's substance, and they were subsequently corrected.

Judge Rodgers stated that there was public comment on item IX.c., RQO 11-065, and Dr. Fiore requested that item IX.b., RQO 11-063, be pulled from the consent agenda.

IX. – CONTINUED

MOTION to approve the consent agenda as amended, pulling advisory opinion letters RQO 11-063 and RQO 11-065. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

X. ITEMS PULLED FROM CONSENT AGENDA

X.a. RQO 11-063

Mr. Johnson stated that:

- The Village of Palm Springs (Palm Springs) police chief asked whether his department could solicit and accept donations from a Palm Springs vendor to refurbish a donated armored vehicle from Brink's, Inc.
- Solicited donations would go directly into the Palm Springs budget for use solely by Palm Springs in conducting the official business of refurbishing the vehicle for police use.

Dr. Fiore questioned whether the wording, However, you may not promise anything in connection with the donation, should be consistently used in all advisory opinion letters regarding solicitations.

Mr. Johnson responded that similar language was usually included in advisory opinion letters regarding solicitations, but the solicited donations in RQO 11-063 were not considered gifts.

Dr. Fiore commented that the Palm Springs police chief was asking whether his department could solicit and accept the donations; not whether the solicited donations would be considered gifts.

Mr. Johnson said that:

- One caveat to RQO 11-063 would be if Palm Springs, as a governmental entity and not for personal, financial gain, provided free police services to a vendor who donated \$50,000 to refurbish the vehicle.
- He believed that the situation he described would not violate the Code since, as a governmental entity, it was transparent, and the government was providing free police services for donations to the government.

X.a. – CONTINUED

Commission on Ethics Staff Counsel Megan Rogers, Esq., clarified that Palm Springs' police chief and officials would engage in the solicitations; not rank-and-file police officers.

Mr. Farach said that he supported Dr. Fiore's idea of no quid pro quo, but he expressed concern about the COE entering into a debate by adding the proposed language.

Mr. Johnson said that he agreed that proposed language based on individual solicitations could be added.

Ms. Rogers commented that Brink's, Inc., sold old armored trucks to law enforcement departments nationwide.

Mr. Johnson stated that:

- Staff had mentioned the Code, section 2-443(b), in RQO 11-053, noting that it prohibited a Town of Palm Beach employee from accepting any benefit, directly or indirectly, if corruptly linked in any way to a quid pro quo arrangement. RQO 11-053 also said that, Corruptly includes an act or omission that is done with a wrongful intent, which is inconsistent with the proper performance of their public duties.
- Staff could incorporate RQO 11-053's boilerplate language into RQO 11-063, and bring back the revision at the October 2011 COE meeting.

Mr. Harbison said that he did not want to impede the government's ability to negotiate.

Judge Rodgers recommended that staff bring back revised language for RQO 11-063.

X.b. RQO 11-065

PUBLIC COMMENT: Alexandria Larson.

X.b. – CONTINUED

Mr. Johnson referenced RQO 11-065's footnote 7, page 58, stating that anonymous gifts were by nature unknown. He added that:

- The standard was that someone should know or should have known with the exercise of reasonable care that an individual was a lobbyist or a vendor of the County or a municipality.
- During some charity drives, individuals would throw money into a tip jar or a boot, and no one observed the denomination's amount.
 - An issue would arise only when donors were identified by calling attention to their donations.
 - Donors would then be admitting to a Code violation if they were a municipal vendor of the person accepting the donation.
- County or municipal employees could decline donations more than \$100, but if they accepted them, the donors' name should be recorded, or they should be asked whether they were County or municipal lobbyists or vendors.

MOTION to approve advisory opinion letter RQO 11-065. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

XI. CHILDREN'S SERVICES COUNCIL – PROPOSED ADVISORY OPINION RQO 11-068

(CLERK'S NOTE: Bruce Reinhart rejoined the meeting.)

Mr. Johnson stated that RQO 11-068 was separated from the other proposed advisory opinion letters. He advised that the COE should handle advisory opinion letters as they came in from entities desiring participation in the COE process regarding their core functions and how the Code impacted their core functions as entities. He added that:

- The Children's Services Council (CSC), established under Florida Statute 125.901, requested an opinion regarding the duties and responsibilities of a member.

XI. – CONTINUED

- By State statute, 10 members were designated for the CSC of which five were governor appointed. Generally, nine CSC members were not within the COE's jurisdiction, and by State statute, one BCC member should sit on the CSC.
- The enabling statute contemplates the role of the CSC to allocate and provide funds for other agencies in the county, which are operated for the benefit of children.
- The CSC's core function was to raise money for other entities, unlike the County or municipalities that generally raised revenue, then decided where to allocate it.
- Only CSC's staff solicited for grants and donations, and CSC members were advised only of grant activity and solicitations by reviewing annual reports or occasional updates on grant proposals or funding collaborations.
- The CSC had established the Resource Development Initiative (RDI), which was a collaborative effort with the United Way of Palm Beach County.
 - When funds were directly solicited by RDI, foundations or other donors usually requested a list of CSC members; however, when RDI solicited contributions for other nonprofit organizations, neither CSC members' names nor their titles were provided.
 - The Prevention Partnership for Children Inc. (PPC), was established as a 501(c)(3) nonprofit charitable organization to allow donors to make donations to nonprofits rather than to the government.
- Although the CSC did not solicit from CSC vendors or lobbyists, if the CSC came under the COE's jurisdiction, that solicitation would become relevant.

XI. – CONTINUED

- Staff had recommended that:
 - Commissioner Steven Abrams, the BCC member sitting on the CSC, was not directly or indirectly, through name or title, involved in solicitations.
 - Since the CSC was another government entity and was mandated to allocate and provide funds to other agencies for the benefit of children, the CSC was in a unique position because funds solicited were solicited by public employees on behalf of the public entity in performance of their official duties for use solely by the public entity for a public purpose.
 - For a government entity that was mandated to raise funds and distribute them to nonprofits and other organizations, the CSC's grants and donations would not be considered gifts.

The CSC's general counsel, Thomas Sheehan, Esq., clarified that:

- The PPC's board of directors were the same individuals as the CSC members, and the PPC utilized the CSC's staff.
- The PPC was an enterprise fund for the CSC.
- Donations would go directly to the CSC and not through the County. Under the Internal Revenue Service codes, donations were tax deductible.

Mr. Johnson stated that:

- Any COE decisions that applied to Commissioner Abrams as a CSC member would apply equally to all CSC officials and employees.
- He was informed that Commissioner Abram's official title would not be used while serving on the CSC.
- Commissioner Abrams would not be soliciting for the CSC, nor would any CSC employees be soliciting on his behalf.

Mr. Sheehan clarified that when soliciting grants, the CSC typically furnished a list of CSC's board of directors, but no CSC member was singled out that the solicitation was being made on behalf of that individual.

XI. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 11-068. Motion by Manuel Farach, seconded by Bruce Reinhart, and carried 5-0.

(CLERK'S NOTE: Mr. Johnson requested that the agenda be reordered to present items XIII.a. and XIII.h. in tandem. The COE's consensus allowed the request.)

XIII.a. RQO 11-035

XIII.h. RQO 11-060

Mr. Johnson stated that:

- Since Palm Tran was a County department and an independent corporation, it was a joint employer of Palm Tran employees.
- Palm Tran employees received a County paycheck, and under the Code, they were considered County employees.

Assistant County Attorney Donna Raney clarified that:

- Palm Tran, created in 1995, was essentially considered a dependent special district.
- Palm Tran was a not-for-profit corporation that was created as an agency or instrumentality of the County, and staff viewed Palm Tran as having an identity of interest that was complete to the County.
- The BCC was Palm Tran's board of directors, and Palm Tran's clerk and treasurer was the Clerk & Comptroller.
- Funds expended for Palm Tran's purposes were considered County funds, and there were no funds in the corporation.

Mr. Johnson stated that:

- The issues in RQO 11-035 and RQO 11-060 were identical except that the Palm Tran Pension Board (PTPB) was created by State statute.

XIII.a. AND XIII.h. – CONTINUED

- The PTPB members were appointed by the County administrator and were paid a County salary while performing PTPB business.
- A new State statute required that the County, and in RQO 11-060, required that the City of Boca Raton (Boca Raton), make good on losses that could occur from PTPB decisions.

Ms. Raney clarified that the new State statute required County sponsorship and funding of normal pension-plan costs but not to compensate for prior actuarial deficits or underfunding.

Mr. Johnson stated that:

- Staff recommended that the COE view this issue as a nexus between the employment by the County and in RQO 11-060, by Boca Raton, and the official duties performed by the County/Boca Raton employees for the PTPB.
- Misuse of office and the responsibility to not corruptly abuse their office still applied to the County/Boca Raton employees who worked for the PTPB, in addition to voting on matters where they would have a financial benefit.
- Since the PTPB was State created, the County's Code had no jurisdiction over gifts given to PTPB members by its vendors, only jurisdiction over gifts given by County/Boca Raton lobbyists or vendors. Any gifts over \$100 to PTPB members from its vendors should be reported; any gifts over \$100 to PTPB members from County/Boca Raton lobbyists or vendors was prohibited.

The PTPB's legal counsel, Bonnie Jensen, clarified that her law firm worked for the PTPB. The law firm did not have any relationship with the County, nor was PTPB counsel paid by the County.

(CLERK'S NOTE: Mr. Reinhart left the meeting.)

Dr. Fiore said that she saw nothing to the contrary indicating that PTPB lobbyists were not subject to the Code because they were lobbying PTPB members who were County employees; hence, they were lobbying the County.

XIII.a. AND XIII.h. – CONTINUED

Boca Raton Police and Firefighters' Retirement System (BRPFERS) legal counsel, Pedro Herrera, commented that:

- The BRPFERS board was composed of Boca Raton employees and nonemployee volunteers.
 - The only requirement of volunteers was that they lived within the Boca Raton city limits.
 - The volunteers were not Boca Raton vendors.
- The BRPFERS was created by State law and by local municipal ordinance.

Ms. Rogers clarified that:

- Pension boards were not typical advisory boards because they had their own vendors.
- Staff viewed the issue as follows: Should employees/officials of the County/ Boca Raton misuse their positions as pension board members for their own personal financial benefit, they would be in violation of the Code.
- The reporting requirements and the gift law regarding lobbyist and vendor restrictions would not apply to employees/officials of the County/Boca Raton.
 - Pension board lobbyists were not registered County/Boca Raton lobbyists.
 - Pension board vendors did not provide, sell, or lease goods or services to the County/Boca Raton; only to the pension boards.
- Gifts or travel reimbursement from pension board lobbyists or vendors to pension board members were reportable gifts.

Dr. Fiore stated that RQO 11-035 and RQO 11-060 were two different situations, and they should be segregated for consideration purposes.

XIII.a. AND XIII.h. – CONTINUED

Mr. Johnson said that:

- Under the Code, employees of governmental entities were not lobbyists; therefore, pension board employees who lobbied the County were not considered lobbyists because pension boards were governmental entities.
- Although pension board employees received County salaries, they were not being paid to specifically serve on a pension board.

Dr. Fiore said that if pension board members were not required to work extra hours to compensate for the hours they spent sitting on the pension board, then they were being paid to sit on the pension board.

Ms. Jenson clarified that pension board members were not allowed to be compensated as trustees; only as employees.

Mr. Farach stated that although shared some of Dr. Fiore's concerns, he was unsure whether they directly impacted today's decisions.

Mr. Harbison commented that if someone was not a government employee and was appointed by a municipal council or a government body to serve on a pension board, that individual should be subject to the same standards as an advisory board member or a government employee.

Ms. Rogers clarified that:

- The individual would be subject to the same standards as an official.
- If a Boca Raton vendor wanted to reimburse an official pension board member for travel expenses, the member should apply for a waiver.

The BRPFERS chair, Christopher Somers, stated that:

- Appointed BRPFERS members had regular outside employment while volunteering their time on the BRPFERS.

- Several appointed BRPFERS members were concerned whether approval of travel-expense waivers from the Boca Raton City Council (BRCC) could be timely accomplished.

XIII.a. AND XIII.h. – CONTINUED

- The appointed BRPFERS members had expressed concern regarding the identification of businesses as Boca Raton vendors and how that information would be tracked.

Mr. Harbison commented that applying for waivers along with BRPFERS members who were Boca Raton employees might be the safest practice, and the logistics of that process could be arranged with the BRCC.

Mr. Johnson stated that:

- The waivers regarded reimbursement specifically for travel expenses to conferences and seminars.
- Employees or the officials appointed by the governing body had a responsibility under the Code's misuse of office section.
- Individuals appointed by the BCC or by Boca Raton were considered officials but not advisory board members, and the Code's specific gift-law section did not apply to them.
- The BRPFERS members had 90 days after attending a conference or seminar to procure the travel expense waiver from the BRCC.

(CLERK'S NOTE: Judge Rodgers left the meeting.)

Mr. Harbison commented that people should not be hypersensitive and so concerned about the Code's rules that they would resign from a board. He added that the COE did not want to impede the talent pool from joining various boards.

Dr. Fiore said that specific areas of the Code may be causing BRPFERS members some anticipated concern, and the COE would like their feedback after working through the advisory opinion process.

Mr. Farach stated that if the BRPFERS needed an issue addressed on an accelerated basis, a process was in place, and Mr. Johnson should be contacted.

Mr. Johnson requested that RQO 11-035 and RQO 11-060 be voted on separately.

**MOTION to approve proposed advisory opinion letter RQO 11-035. Motion by Ronald Harbison.
XIII.a. AND XIII.h. – CONTINUED**

MOTION DIED FOR LACK OF A SECOND.

Mr. Johnson suggested tabling the item until the October COE meeting.

MOTION to request that Mr. Johnson research whether PTPB vendors and lobbyists were not lobbying the County when they lobbied PTPB members who were considered County employees, and to resubmit proposed advisory opinion letter RQO 11-035 with his recommendation. Motion by Robin Fiore.

MOTION DIED FOR LACK OF A SECOND.

Mr. Farach stated that the motion was to table item XIII.a.

Mr. Johnson clarified that staff's recommendation was to proceed with RQO 11-060.

MOTION to approve proposed advisory opinion letter RQO 11-060. Motion by Ronald Harbison, and seconded by Robin Fiore.

Dr. Fiore asked whether Mr. Johnson could facilitate the timeliness of the BRCC's waiver process.

Mr. Johnson replied that if an issue existed, he would assist. He also stated that if the BRCC decided that a travel expense was not appropriate after reimbursement was made during the 90-day window, the member who attended the conference or seminar would be required to pay any expenses over \$100 if the funds were received from a Boca Raton vendor or lobbyist.

UPON CALL FOR A VOTE, the motion carried 3-0. Bruce Reinhart and Judge Edward Rodgers absent.

(CLERK'S NOTE: For continuation of item XIII.a., see page 19.)

RECESS

COMMISSION ON ETHICS

18

SEPTEMBER 1, 2011

At 3:57 p.m., the vice chair declared a recess.

RECONVENE

At 4:11 p.m., the meeting reconvened with Mr. Farach, Dr. Fiore, Mr. Harbison, and Judge Edward Rodgers present.

XIII.a. – CONTINUED

Ms. Jensen stated that:

- Under the PTPB's trust agreement, there was no requirement that trustees be County employees.
- Currently, the PTPB had no vendors or lobbyists who were also County vendors or lobbyists.
- The PTPB vendors consisted of two contracted attorneys, an administrator, an actuary, an investment monitor, and approximately eight investment managers.
- Approximately 40 PTPB vendors attended Florida Public Pension Trustees Association's educational conferences.
- All travel expense reimbursements came from the pension fund itself on pension fund checks.
- The PTPB was regulated by State statute regarding the ethics gift law.
 - If a PTPB vendor attending a conference took PTPB trustees to dinner, the vendor was limited to spending \$25 per trustee. If a PTPB vendor spent more than \$25 per invited person, the vendor reported the amount as a lobbyist to the State.
 - The PTPB trustees were not permitted to accept more than \$100.

MOTION to approve proposed advisory opinion letter RQO 11-035. Motion by Manuel Farach.

(CLERK'S NOTE: Motion seconded later in the meeting.)

XIII.a. – CONTINUED

Mr. Farach stated that proposed advisory opinion letter RQO 11-35 did not answer Dr. Fiore's earlier question whether PTPB vendors and lobbyists were not lobbying the County when they lobbied PTPB members who were considered County employees. He added that her concerns, which he and Mr. Harbison shared, could be an issue in the future.

MOTION SECONDED by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Mr. Johnson stated that item XIII.i. contained public comment. He requested that item XIII.i. be presented at this time. The COE's consensus allowed the request.)

XIII.i. RQO 11-062

PUBLIC COMMENT: Alexandria Larson.

Mr. Johnson noted that Village of North Palm Beach (Village) Councilman Thomas Hernacki's question regarding a possible conflict of interest that came before a vote at the July 28, 2011, Village council meeting. He added that:

- Mr. Hernacki had abstained from the vote and had filed a Form 8B.
- Should the COE find that Mr. Hernacki benefitted financially from participating and voting to change a Village ordinance, staff could amend the proposed advisory opinion letter and bring it back to the COE.

Ms. Rogers clarified that Mr. Hernacki paid rent and parking for his place of business. She added that:

- The free boat storage facilities were located on high school property since Mr. Hernacki renovated the boats for use by high school crew teams.
- The free boat storage on high school property was available to anyone who allowed his or her boat usage for the high school's crew teams.

Mr. Johnson stated that the COE would only be denying Mr. Hernacki his voting rights if the Code did not contain a section that dealt with having to abstain from voting and not participating if there was a special financial benefit.

XIII.i. – CONTINUED

Mr. Farach requested that staff bring back RQO 10-013's recommendation regarding an advisory opinion letter that dealt with Aviation and Airports Advisory Board (AAAB) members of general aviation airports. He added that the COE members had voted on the matter, and the circumstances could be applicable to this situation.

Mr. Johnson responded that:

- In RQO 10-013, the airports were self-contained; therefore, AAAB members' financial decisions impacted only users of the airports, and the County was not required to compensate for the monetary difference regarding those financial decisions.
- Only individuals who used those airport fields were affected by AAAB members' financial decisions. The AAAB members who owned airplanes were similarly situated to everyone else whether they voted for or against that financial decision.

Mr. Farach commented that staff's analysis in RQO 10-013 as to the financial benefit and the similarly situated issue was the proper analysis to apply to RQO 11-062.

Mr. Johnson said that:

- He believed that the matrix used in RQO 10-013 meant that Mr. Hernacki had a special financial interest because even in the best-case scenario, there were numerous similarly situated persons but not a majority.
- Staff could reverse RQO 11-062's recommendation to state that financial benefits were involved and that Mr. Hernacki lacked enough people who were similarly situated in his position.
- Once abstaining as a council member, Mr. Hernacki could not personally influence an ordinance vote, and he could speak only after the vote was taken.

Mr. Harbison requested that staff consider the fair-market value concept in similar matters.

XIII.i. – CONTINUED

MOTION to request that staff rewrite proposed opinion letter RQO 11-062 reflecting the analysis used in RQO 10-013, and to bring back the revised letter to the October 2011 COE meeting. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 3-0. Judge Edward Rodgers opposed and Bruce Reinhart absent.

(CLERK'S NOTE: The numeric order of the agenda was restored.)

XII. PROPOSED ADVISORY OPINIONS – RE: CHARITABLE ORGANIZATIONS

XII.a. RQO 11-039 (RESUBMITTED)

Mr. Johnson stated that:

- A Village of Tequesta (Tequesta) attorney asked whether a municipality could hold a charity fundraising event on behalf of a nonprofit organization that benefitted public safety officers, using off-duty firefighters and certain on-duty municipal staff to solicit and run the event.
- A municipal employee and a Tequesta council member served on the nonprofit organization's board.
- Donations would be solicited from Tequesta's vendors.
- The event included raffles, door prizes, and silent auctions. All raised funds would be deposited into the nonprofit organization's account; however, 75 percent of the funds would be redistributed to other Tequesta-approved local nonprofit organizations.
- Staff recommended that a municipality could organize and hold charitable events to benefit the nonprofit organizations that they chose as long as there was no quid pro quo or other special considerations given by Tequesta's officials or employees to any donors, and as long as no person

or entity with a pending application for approval or award currently before Tequesta's council was solicited for donations.

- Tequesta's staff, employees, and resources could not be used in vendor solicitations over \$100.

XII.a – CONTINUED

- Any vendor or lobbyist solicitations over \$100 should be logged.
- Staff was unable to determine the nonprofit organizations' names that received the 75-percent funding; therefore, RQO 11-039 was revised to state that individuals using their official titles to serve on boards for the nonprofit organizations may need to recuse themselves and abstain from any vote or solicitation involving a special financial benefit.

Commission on Ethics Investigator Mark Bannon clarified that Tequesta's firefighters chose which charities should receive the donated funds. The charities' names were presented as a package to Tequesta, and Tequesta's council voted on the package's approval.

MOTION to approve proposed advisory opinion letter RQO 11-039. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

XII.b. RQO 11-051 (RESUBMITTED)

Mr. Johnson stated that:

- A Town of Juno Beach councilman was personally creating a pending 501(3)(c) charitable fundraising organization. He was on the nonprofit organization's board, and he wanted to hold a volleyball fundraiser.
- The advisory opinion letter was resubmitted due to concerns that the language regarding future potential financial benefits was not strong enough. Further staff review supported the concern.
- The advisory opinion letter was now properly vetted to state that any remaining donated funds could be used to either compensate the nonprofit organization's board of directors or for travel expenses.

- Donated funds that compensated the nonprofit organization's board or for travel expenses were considered financial benefits.
- If the funds represented a personal, financial benefit for the councilman, he could not be involved in any official acts, nor could he use his official name to solicit votes to specially and financially benefit himself or his outside business or employer.

XII.b. – CONTINUED

- The nonprofit organization was considered a business owned by the councilman. As a board of director's member, he could possibly own more than five percent of the nonprofit organization; therefore, the Code would apply to him.

MOTION to approve proposed advisory opinion letter RQO 11-051. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

XIII. PROPOSED ADVISORY OPINIONS

XIII.a. Pages 13-20.

XIII.b. RQO 11-037 (RESUBMITTED)

Mr. Johnson stated that:

- The Town of Palm Beach (Town) manager asked whether a prohibited conflict of interest would arise if a Town building official was required to review and give final approval of work completed by his brother whose company was hired to perform the work of a resident inspector.
- The issue was discussed at the July 7, 2011, COE meeting, and it was determined that although he would treat his brother in the same manner as similarly situated members of the public, there would be no violation.
- The fact that their relationship was so close and the Town manager had discretion in the matter led the COE to conclude that it would be preferable for someone else, such as the Town manager's supervisor, to sign off on his brother's projects.
- He had spoken to the Town manager who agreed with the COE's conclusion.

MOTION to approve proposed advisory opinion letter RQO 11-037. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

XIII.c. RQO 11-047

Mr. Johnson stated that:

- A Village of Palm Springs (Village) police chief attended a statewide police chief's conference with his family. Certain expenses were allowable; others were not.
- The Village paid for the police chief's registration fee. The police chief paid for his family's registration fee.
- The police chief received a discounted hotel rate, which had been negotiated by the conference organizers.
- At the conference, the police chief won a raffle for a \$120 Blue-Ray disc player.
- He visited the hospitality suite, and he divided the hospitality suite cost by the number of people in his party. Neither the raffle nor the hospitality suite was sponsored by a Village vendor.
- As part of the conference program, the police chief and his family accepted tickets valued at \$50 per person to attend a NASCAR Night presented by Motorola, a Village vendor.
- The police chief had attended an awards banquet hosted by the police chief's association, and the Village received an award for excellence in policing, a wall plaque, and a \$1,000 check payable to the Village's police department.
- The banquet that was held by the police chief's association was estimated to cost \$55.47 per guest, but the police chief paid those expenses when he registered himself and his family.
- Staff had recommended that:

- Any gift received by an employee and associated with a conference related to an employee's public position that was valued at greater than \$100 was either a reportable gift or a prohibited gift.

XIII.c. – CONTINUED

- Registration fees paid by a municipality for an employee's conference attendance in his or her official capacity were specifically excluded from the gift definition and were not reportable.
- Discounted hotel rates received in conjunction with conference attendance as part of a negotiated group rate available to all similarly situated conference attendees were nonreportable gifts as far as the difference in price from the listed hotel rate and the negotiated rate.
- The Blu-Ray disc player and attendance at the hospitality suite, while reportable if valued over \$100, was not prohibited because they were not provided by a Village vendor, lobbyist, principal, or employer of a lobbyist.
- If the Blu-Ray disc player valued at \$120 had been given by a vendor, the police chief would have 90 days to return the \$20 without being in Code violation.
- Motorola's NASCAR Night gift, which was valued at \$50 per person, was a prohibited gift if valued over \$100. The police chief accepted tickets valued at \$200 so \$100 would need to be reimbursed to be in Code compliance.

MOTION to approve proposed advisory opinion letter RQO 11-047. Motion by Manuel Farach, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

XIII.d. RQO 11-050

Mr. Johnson stated that:

- A City of Riviera Beach attorney asked whether a sitting council member must abstain from voting on her son's trustee reappointment for a municipal firefighters' pension trust fund.
- The trustee's position was voluntary and unpaid.

XIII.d. – CONTINUED

- The Code did not prohibit the appointment of a relative on a non-land-use planning, or zoning commission for municipalities with populations less than 35,000.
- Only the County Code's antinepotism law applied to RQO 11-050, and according to the Code's financial benefit section, the council member was not required to abstain from voting.

MOTION to approve proposed advisory opinion letter RQO 11-050. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

XIII.e. RQO 11-052

Mr. Johnson stated that:

- The Village police chief inquired whether Village employees' acceptance of 15-percent discounts from Friendly's Restaurant violated the County's Code.
- A similar issue would arise again for an advisory opinion request where the restaurant was a vendor.
- Staff recommended that public employees and officials were not prohibited from accepting discounts from a local restaurant that was not a Village vendor, employer, or principal of a lobbyist doing business with, or lobbying their municipal government as long as there was no quid pro quo or special privilege or treatment given to the restaurant in exchange for, or because of, the discount.

MOTION to approve proposed advisory opinion letter RQO 11-052. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

XIII. – CONTINUED

XIII.f. RQO 11-053

Mr. Johnson stated that:

- The Town manager asked whether awards given to employees for outstanding performance or employee tenure were considered gifts for purposes of gift disclosure requirements, and whether the gifts themselves could be donated by a nonprofit organization that was not a Town vendor, lobbyist, principal, or employer of a lobbyist.
- Staff had submitted that:
 - Recognition for length of service to the Town or employee awards for outstanding performance were excluded from the County Code's gift definition and were exempt from all prohibitions and reporting requirements of the gift law.
 - The County's Code, however, prohibited sponsorship of awards by a nonprofit organization if the sponsorship was based on any quid pro quo arrangement or was based on the receipt of any special benefit resulting from an official act.

MOTION to approve proposed advisory opinion letter RQO 11-053. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

XIII.g. RQO 11-055

Mr. Johnson stated that:

- The Town manager inquired whether employees could accept gifts donated to the Town for distribution to employees through the use of a blind-draw raffle.

- Staff had submitted that:
 - While not prohibited from accepting donated gifts to the Town, some limitations and prohibitions existed regarding who gave those gifts.

XIII.g. – CONTINUED

- As long as the individuals or entities donating the items were not Town vendors, lobbyists, principals, or employers of lobbyists, and the gifts were not accepted in exchange for the performance or nonperformance of a legal duty or an official action, employees were free to accept the gifts. However, gifts from a vendor valued over \$100 were prohibited.
- For transparency purposes, permitted gifts valued over \$100 should be reported.

MOTION to approve proposed advisory opinion letter RQO 11-055. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

XIII.h. Pages 14-18

XIII.i. Pages 20-22

XIII.j. **RQO 11-064**

Mr. Johnson stated that:

- County Information Systems Services Director Steve Bordelon administered discounted mobile phone packages provided by AT&T, Verizon, Sprint and T-Mobile to public officials.
- Mr. Bordelon had asked whether employees could accept discounted mobile phone packages provided by the four major carriers when discounted rates were available to all government employees, both Countywide and Statewide.
- Staff had recommended that:

- Employees were not prohibited from accepting mobile phone discounts, provided that the discount was not based on preferred treatment of the vendor by the employee.

XIII.j. – CONTINUED

- The mobile phone discounts were not prohibited, provided that they applied to all similarly situated government employees or officials, and that they were not otherwise offered as a quid pro quo or as a means to convey a special financial benefit in violation of either the County Code's financial or corrupt misuse of office sections, or for officials who received similar discounts, as referenced in the voting conflict section.

Dr. Fiore suggested that the second paragraph, last sentence, Public comment was received, including input from a former Florida Ethics Commissioner, be removed.

MOTION to approve proposed advisory opinion letter RQO 11-064 as amended to reflect striking the last sentence in the second paragraph. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

XIII.k. RQO 11-066

Mr. Johnson stated that:

- Martin DeLoach, Palm Beach Shores fire chief and Fire Chief's Association of Palm Beach County vice president, had spoken at the August 4, 2011, COE meeting regarding whether the Code's uniformed extra-duty detail outside employment provisions applied equally to law enforcement and to fire rescue agencies.
- Judge Rodgers had expressed his concern at the August 4, 2011, COE meeting regarding not having the municipalities and the unions present to comment on the issue.
- Fire Chief DeLoach had spoken with the League of Cities executive director and with various union representatives for the county's firefighters.

Everyone agreed with adding the filing requirement exemption of outside employment waivers for extra-duty details by police and now by firefighters that were administered or contracted by their public departments. Fire Chief DeLoach had provided COE staff with a letter regarding that agreement.

XIII.k. – CONTINUED

MOTION to approve proposed advisory opinion letter RQO 11-066. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

XIII.l. RQO 11-072

Mr. Johnson stated that:

- A City of Palm Beach Gardens (City) municipal employee who supervised and administered a City public arts program asked whether she may receive compensation from a local chamber of commerce for selecting artists to participate in an annual arts festival in her personal, non-City time. The municipal employee's stipend for 10 hours of judging would be \$250 and lunch.
- Staff submitted that:
 - The municipal employee may participate in the event, although the chamber of commerce's offer was made based on her municipality's membership in the North Palm Beaches Cultural Alliance.
 - The municipal employee had been invited to judge the event not because of her official position but because of her expertise and proficiency in the field.
 - The municipal employee's participation would be on personal time, and by participating in the program, she would have an opportunity to be exposed to innovative, local, and national artists, which would, in turn, benefit her public employer and her job.

MOTION to approve proposed advisory opinion letter RQO 11-072. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0.

XIV. EXECUTIVE DIRECTOR COMMENTS

XIV.a.

DISCUSSED: October 2011 COE meeting.

Mr. Johnson suggested starting the October 2011 meeting at 1:30 p.m. to cover the issues to be discussed.

XIV.b.

DISCUSSED: Convening an October 2011 Inspector General Committee meeting.

Judge Rodgers said that at the last meeting with County Inspector General (IG) Sheryl Steckler, he had questioned why the COE was present and what power or relationship the COE had with Ms. Steckler and the Office of Inspector General. He added that a County attorney had informed him that the COE had extensive power. He said that he invited the attorney to speak regarding that matter at the next COE meeting.

Mr. Johnson replied that:

- Issues would arise in future complaints that would possibly be brought before the IG Committee.
- He would place an item on the COE's October 2011 agenda regarding a special IG Committee meeting that would last approximately 15 minutes to a half-hour long.
- At the October 2011 COE meeting, Assistant County Attorney Leonard Berger would make a presentation on the COE's powers and responsibilities by Code regarding the IG and the IG Committee.

- The COE's regular October 2011 meeting could temporarily adjourn to convene an IG Committee meeting, then reconvene the COE's regular meeting.
 - Two additional members, the public defender and the state attorney, would also be present at the IG Committee.
 - Both meetings would be publicized.

XIV. – CONTINUED

Mr. Farach suggested that the IG Committee's updated meeting take place before the COE's meeting, and his colleagues agreed.

Mr. Johnson said that:

- Mr. Berger would provide an advance copy of his presentation to the COE.
- Mr. Berger would be addressing the Code regarding the IG Selection Committee's ability to rehire Ms. Steckler at the end of four years or to remove her in the interim based on malfeasance or extreme misfeasance.
- The IG ordinance had a process for complaints.

Judge Rodgers commented that:

- He had received several complaints from municipal managers and municipal council members.
- A meeting could be arranged with himself, Ms. Steckler, and perhaps the League of Cities' director where he would discuss some of the complaints and problems as a mediator and not as a CEO representative.

Dr. Fiore said that she wanted Ms. Steckler to be aware that Judge Rodgers would be present only as a mediator.

Judge Rodgers said that Ms. Steckler would be scheduling the meeting. Mr. Farach added that his only concern would be that Judge Rodgers mediated it in his private, individual capacity and not in his capacity as the COE chair or as an IG Committee member.

Mr. Johnson added that a problem would occur if more than one IG Committee member attended the meeting because there would be a Sunshine Law issue. He added that attendees would have no authority to make decisions.

League of Cities Director Richard Radcliffe said that he would help to facilitate the meeting.

Mr. Harbison said that the COE and the IG had no power to criminally prosecute or to send anyone to jail.

XV. PUBLIC COMMENTS – None

XVI. ADJOURNMENT

At 5:27 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

VI – STAFF SYNOPSIS OF PROCESSED ADVISORY OPINIONS

RQO 11-057 Peter Elwell

The Town Manager for the Town of Palm Beach asked whether the children of town employees may accept scholarship dollars from private, for-profit entities doing business within the Town. In this case, these entities do not sell, lease or lobby the Town and these scholarships are available to any college-bound Town resident or child of *any* employee of *any* business located within the municipality's borders.

Children of Town employees are not prohibited from accepting scholarships provided by local businesses that do not sell, lease or lobby the Town of Palm Beach. There is no evidence that these scholarships are provided with the intent to benefit Town employees, as scholarship funds are available to any employee of any business within the Town or any resident within the Town. In addition, since the scholarship gift is to the child and not indirectly through the Town employee, it is not a reportable gift.

RQO 11-062 Thomas Hernacki

A City Councilman asked whether a conflict of interest existed were he to participate and vote to change an ordinance increasing the allowable size of boats or R.V.s parked on a single-family residential property where he owns a racing shell stored in violation of the ordinance. While the council member had alternative locations to store his racing shell without cost, the ordinance restrictions would affect his ability to store the shell on his property and thus he would receive a fair market value financial benefit should the ordinance be amended.

Elected officials may not use their official position to give themselves a special financial benefit not shared with similarly situated members of the general public. Voting on an ordinance change that would allow the Councilman to store his racing shell on his property would provide a fair market value benefit regarding the potential need for rental space. This would constitute a prohibited special financial benefit and result in violation of the voting conflicts and misuse of office sections of the Code. The Councilman previously abstained when this issue came before the City Council and subsequently requested this opinion. Should this matter come before the Council he must once again publically disclose the nature of the conflict, file the required state disclosure form, refrain from voting and not participate in, or influence the process in any way.

RQO 11-063 Mark Hall

The Police Chief of Palm Springs asked whether his department may solicit and accept donations from a Village vendor in order to refurbish a newly acquired armored vehicle.

Since the solicitations are made and donations are used on behalf of the village of Palm Springs Police Department (PSPD) for use solely by the department in conducting its official business, these donations are not considered to be gifts under the code of ethics. Department staff is not prohibited from soliciting and accepting donations from vendors of the Town for the PSPD so long as they are doing so in their official capacity for use solely by the Village for a public purpose. However, the solicitation or acceptance of funds, while not a gift in this context, must not be based upon a quid pro quo, special privilege or treatment given, that would constitute a misuse of office.

RQO 11-069 Diana Grub Frieser

The Boca Raton City Attorney asked whether city employees and officials may accept tickets, provided by the City, to attend events held at the Mizner Park Amphitheater (MPA) and if so, are they reportable gifts. The City owns and operates the MPA and leases the space to promoters for concerts and other events. Pursuant to the lease agreements provided to promoters, the City reserves several skybox-style seating areas for City use; seats to these events are not part of an employee's or official's benefit package or employment contract.

City officials and employees are not prohibited from accepting tickets from the City and attending events hosted at the MPA. An event promoter leasing the space from the City is not a vendor as defined by the Code of Ethics since the nature of the transaction is a lease from the City as compared to leasing or selling to the City. Even if a promoter became a vendor or service provider to the City, the balcony seats are not under the vendor's control. Since these seats are retained by the City, they are not indirect gifts from a vendor to an employee or official. However, as an event or concert provides added value to the seats themselves and should the per person value of the ticket exceed \$100, the gift must be reported as required by the Code of Ethics.

RQO 11-075 Connor Lynch

A member of the Board of Directors of the Plumosa School of the Arts Foundation (PSAF) asked whether municipal mayors may participate in a "Mayor's Throwdown" at Bru's Room Sports Grill in Delray Beach. The Foundation invited three municipal mayors to act as celebrity bartenders competing to raise the most "tips" throughout the evening. In order to comply with the charitable solicitation requirements of the code, the foundation proposed placing volunteers at each tip jar in order to record any donation in excess of \$100. In addition, the tip jars would not be visible to the mayors during the course of the event and the event sponsors agreed to announce, both in print and orally, that municipal vendors or lobbyists were required to record any gift in excess of \$100 on a log provided by the sponsors.

In addition to the bartending competition, the PSAF has an ongoing campaign to sell name plates for auditorium seats and engraved bricks placed at the entrance to the school auditorium. Both items sell for more than \$100; however, event attendees who purchase these items are required to complete a form that contains a checkbox for vendors and lobbyists to indicate that they sell, lease or lobby the municipalities involved in the fundraiser.

The direct or indirect solicitation or acceptance of otherwise prohibited gifts in excess of \$100 from vendors and lobbyists is not prohibited, so long as the gift is transparent, not obtained with public resources and is not from vendors with a pending application before their municipality. A log of these gifts must be transmitted to the COE within 30 days of the event. In addition, a gift of any value may not be given in exchange for the past, present, or future performance of an official act or legal duty.

RQO 11-077 Elizabeth Harfmann

A county employee asked whether employees may use their public email to invite co-workers to a charity event and whether they may sell raffle tickets associated with the event during their lunch breaks or other non-government time. The employees interested in soliciting on behalf of the "Help Lizzie Heal" Event are not on the board of directors or officials of the non-profit charity, nor do they plan to solicit vendors or lobbyists of the county. None of the raffle prizes are provided by vendors or lobbyists of the county.

The Code of Ethics does not prohibit employees from participating in and soliciting other county employees in conjunction with a fundraising event. While a public employee may not use their county email to solicit charitable contributions in excess of \$100 from vendors or lobbyists, the code does not prohibit employees from using their email to publicize events or solicit donations from co-workers. County or municipal governments may have policies and procedures that address the personal use of public email aside from the code of ethics; responsibility for interpretation and enforcement of county or municipal policies or procedures remains with an employee's supervisor or department head.

RQO 11-078 William Lapp

A Palm Beach County resident and applicant for an advisory board position asked whether a conflict of interest would exist if he were to serve on a County advisory board that may review grant proposals from non-profit entities for which he serves on the board of directors or proposals from an entity where his wife is the executive director.

An advisory board member may not use his or her official position to give their spouse, their spouse's outside employer, or a nonprofit organization of which they or their spouse or domestic partner are an officer or director a special financial benefit not shared with similarly situated members of the general public. Voting, participating or attempting to influence other board members or staff to benefit one of these persons or entities would constitute a misuse of office. In addition, an official may not specially financially benefit his or her spouse, or the spouse's outside business or employer.

RQO 11-079 Peter Elwell

The Town Manager for the Town of Palm Beach asked whether children of Town employees may accept educational scholarships provided by the Palm Beach Country Club Foundation and Palm Beach Day Academy. The Palm Beach County Club Foundation is a registered 501(c)3 non-profit and scholarship dollars are funded through membership dues. The Palm Beach Day Academy reserves a limited number of student positions for full tuition scholarships awarded to town employees. Both programs are available exclusively to Town employees; however, neither entity is a vendor or lobbyist who sells, leases or lobbies the Town of Palm Beach.

Town employees are not prohibited from accepting scholarship dollars on behalf of their children from the Palm Beach County Club Foundation and Palm Beach Day Academy, provided that there is no quid pro quo or special treatment or privileges given to either organization in exchange for these scholarships. Unlike the scenario presented in RQO 11-057, here scholarship eligibility is contingent upon a parent's status as a public employee. Therefore, should the value of a scholarship exceed \$100, scholarship funds must be reported on the parent's annual gift reporting form.

RQO 11-080 Peter Elwell

The Town Manager for the Town of Palm Beach asked whether children of Town employees may accept educational scholarships sponsored by the Palm Beach Civic Association and the Citizen's Association of Palm Beach, but administered by the Town. Neither organization is a vendor or lobbyist who sells, leases or lobbies the Town of Palm Beach. The Town's human resources department accepts applications from candidates and a selection committee comprised of the Town's Director of Human Resources and one representative from each of the sponsoring organizations award the scholarships. Scholarships are funded with membership dues; there is no fundraising associated with these scholarships.

Town employees are not prohibited from accepting scholarship dollars on behalf of their children from the PBCA and the CAPB, however should the value of these scholarships exceed \$100 they must be reported. No Town employee may use their official position to secure a scholarship for their child.

RQO 11-082 Shelley Vana

A Palm Beach County Commissioner asked whether she may accept two tickets to the Business Development Board Gala at the Breakers on Palm Beach (BDB Gala) from Mr. Kenneth Kahn, President of LRP Publications, Inc. Neither Mr. Kahn nor his company, LRP Publications, sell, lease or lobby Palm Beach County. The tickets are valued at \$250 each.

County officials are not prohibited from accepting a ticket, pass or admission to a public event, or is an expenditure made in connection with an event sponsored by a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract business opportunities to Palm Beach County, provided that, if the ticket value exceeds \$100, they are not given by a vendor or lobbyist of the county. The BDB Gala is both a public ticketed event and is hosted by an entity that fits within the gift prohibition exception and the donor is not a vendor or lobbyist. Because the total value of the tickets is \$500, they are a reportable gift and must be reported on the State of Florida Quarterly Gift Disclosure Form. A copy of this form must be submitted to the Palm Beach County Commission on Ethics.

RQO 11-083 Bill Orlove

The Vice-Mayor of the City of Boynton Beach asked whether he may solicit donations, using his official position, from local businesses on behalf of a City-sponsored event. In order to promote the City as a wedding destination, the City is sponsoring a wedding sweepstakes where the winner will receive an all-inclusive wedding package. In association with this event, the Vice-Mayor plans to solicit donations of wedding related goods and services from local businesses. All donations will be accepted by the City through their Recreation Department for the purpose of this City event. Some prizes may be from City vendors and exceed \$100 in value.

The Code of Ethics does not prohibit employees or officials from soliciting donations from local businesses in their official capacity, so long as the donations are given to the City for use in conducting its official business, including a City sponsored event, and not based on any *quid pro quo* or other improper reason.

RQO 11-086 James M. Reid

A Palm Beach County Fire Rescue employee asked whether County employees may participate as a group in the Florida or Powerball Lotteries and if so, may they email scanned copies of lottery tickets via the county email system.

The Palm Beach County Code of Ethics does not prohibit county employees from playing the Florida or Powerball lotteries, both of which are authorized and sanctioned lottery systems by the State of Florida, either individually or as a group. Further, the use of county email to send personal messages as described does not reach the level of being a corrupt misuse of official position under these facts. The COE cannot opine as to whether such actions are prohibited, limited or regulated by County or Fire Rescue Department Policy.

RQO 11-087 Karen Marcus

A Palm Beach County Commissioner asked whether she may submit a letter in support of a grant proposal submitted by a North County healthcare non-profit organization in her official capacity. The non-profit is soliciting grant funds from three healthcare foundations, one of which is a county vendor.

Elected officials are not prohibited from soliciting grant funding using their official title on behalf of nonprofit entities, provided that they or their spouse or domestic partner are not officers or directors of the non-profit recipient and any grant monies received from a vendor, lobbyist or principal or employer of a lobbyist of Palm Beach County are recorded in accordance with the transparency requirements of the Code of Ethics. Should an elected official lend their name and official title to a fundraising effort for the benefit of a nonprofit entity where they serve as an officer or director, such action would *per se* constitute using one's elected office to specially financially benefit that nonprofit.



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 13, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: RQO 11-057
Gift Law

Dear Mr. Elwell,

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

YOU ASKED in your submission dated July 12, 2011 whether the children of Town of Palm Beach (the Town) employees may accept college scholarships provided by Neiman Marcus and the Palm Beach Chamber of Commerce.¹

IN SUM, the children of Town employees are not prohibited from accepting scholarship dollars provided by the Palm Beach Chamber of Commerce and Neiman Marcus. These scholarships are available to any college-bound Town resident or any child whose parent is employed by a business within the Town of Palm Beach and neither the Chamber of Commerce nor Neiman Marcus is a vendor, lobbyist, principal or employer of a lobbyist of the Town.

THE FACTS as we understand them are as follows, Neiman Marcus, a private business, and the Palm Beach Chamber of Commerce present an annual scholarship to graduating seniors who are full or part time Town residents or who have a parent who is employed by a business within the Town of Palm Beach. Scholarships are funded through in-house contributions from Neiman Marcus and the Chamber; no fundraising is performed to subsidize these scholarships. Neither the company nor the chamber is a vendor or lobbyist who sells, leases to, or lobbies the Town. While the Town publicizes the scholarship opportunity, it is not involved with the selection of candidates in any way.

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

Section 2-444(g) defines a gift as *"the transfer of anything of economic value,"* and §2-444(f)(2)b requires employees to complete an annual gift disclosure form, reporting any gift in excess of \$100 unless one of several exceptions apply. While scholarship dollars are a thing of value, the question remains whether giving a scholarship to a child of a public employee is an indirect gift to the employee and thus a reportable gift. In addressing

¹ This request contained separate issues requiring individual advisory opinions. Additional related opinions will reference RQO 11-057.


valuation, the Commission on Ethics adheres to Florida state standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code. The Florida Administrative Code suggests that a gift may be considered an indirect gift where the gift is provided with the intent to benefit the employee. Here where the scholarship is offered to all town residents and the children of *any* person who is employed by a business within Palm Beach, there is no evidence that the scholarships are targeted to ultimately benefit the employee as compared to their child. Accordingly, should a child of a Town employee receive one of these scholarships, it is not a reportable gift.

IN SUMMARY, based on the information that you have provided, the children of Town employees are not prohibited from accepting scholarships from Neiman Marcus and the Palm Beach Chamber of Commerce. Neither organization sells, leases or lobbies the Town and the scholarship funds are available to any resident of Palm Beach or children of any person who is employed by a business within the Town. The employee's public status bears no relationship to eligibility for the scholarships and therefore any scholarship received by their child is not a reportable gift.

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/mr/gal



Palm Beach County Commission on Ethics

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Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 20, 2011

Mr. Thomas Hernacki
717 Buttonwood Road
North Palm Beach, FL 33408

Re: RQO 11-062
Voting Conflicts

Dear Mr. Hernacki,

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

YOU ASKED, in your capacity as a City Councilman for the Village of North Palm Beach, whether a conflict of interest exists if you were to participate and vote to change an ordinance increasing the allowable size of a boat or RV parked on a single family residential property if you own a racing shell that may be covered under the ordinance.

IN SUM, as an elected official you may not use your official position to give yourself a special financial benefit not shared with *similarly situated members of the general public*. Voting on an ordinance change that would allow you to store your racing shell on your property would give you a fair market value benefit regarding the potential need for rental space and thereby constitute a misuse of office. The facts submitted do not otherwise indicate that there are a sufficient number of similarly situated individuals to negate the application of the special financial benefit prohibitions within the Code of Ethics. Therefore, you must continue to *publicly disclose the nature of the conflict*, file the required state disclosure form, refrain from voting and not participate in, or influence the process, if this issue comes before the Village Council.

THE FACTS as we understand them are as follows:

You are a Councilman for the Village of North Palm Beach (the Village). The Village has an ordinance restricting residents from parking boats and recreational vehicles (RVs) in excess of thirty feet long by ten feet high on single-family residential property. You own a 1983 Vespoli racing shell that is over 32' long, but it is not 10' high. You contend that the racing shell is not covered by the ordinance, however, the COE cannot opine as to your responsibility under municipal law. For purposes of this opinion only, the COE will consider the racing shell as subject to the ordinance restrictions. Therefore, the code restrictions would affect your ability to store the shell on your property.

This matter was scheduled for discussion before the Village Council on July 28th. At that time you abstained from voting or participating in the matter and you filed an 8b conflict of interest form. You have not brought this matter before the council in regards to your personal property, nor have you received a notice of violation. In addition, you are aware of numerous other individuals with boats and RVs currently in violation of the Village ordinance.

You have various locations where you can store your racing shell without incurring additional cost, including your office, as well as rack space available to you free of charge at the Palm Beach Rowing Association's boathouse on Lake Mangonia, among others.

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

Section 2-443(a) prohibits you from using your official position to give yourself "*a special financial benefit, not shared with similarly situated members of the general public.*" Similarly, §2-443(c) prohibits you from voting or participating on an issue that would result in a *special financial benefit* obtained by you or one of the other persons or entities outlined by the code. All residents of the Village are subject to the ordinance. Owners of RVs and boats as well as non-owners are affected by such regulations and would therefore be considered similarly situated under these facts and circumstances. While you have indicated that there may be numerous resident owners of RVs and boats within the Village who are in a similar situation, you are not aware of the number, nor is there any indication that affected owners would constitute a majority or even a significant minority of Village residents.¹ Notwithstanding the fact that you currently have free storage space available at other locations, the COE finds that having to remove your boat from your home location, in combination with the potential travel costs and market value of rental space in the future, presents a sufficient basis for a finding an economic value in storing the racing shell at your home. As a result, by voting on this issue, you would be using your official position to give yourself a special financial benefit of maintaining that storage site at your home.

Accordingly, should this matter come before the Village Council in the future, you must 1) disclose the nature of your conflict before the Council discusses the issue; 2) abstain from voting, discussing or otherwise participating in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the Village Clerk and the Palm Beach County COE. The language of §2-443(c) is as follows:

County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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...


¹ RQO 10-013 (Airport Advisory Board members are similarly situated to users of the airport where a decision only affects users and not the general public)

IN SUMMARY, based on the facts and circumstances presented, you are prohibited from voting or participating in the discussion surrounding a change to the current Village boat and RV storage ordinance. The COE recognizes and commends the fact that you have already complied with the Code of Ethics requirements prior to submitting this request for opinion and agrees with your prior assessment that abstention and non-participation is required.

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/mr/gal



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 20, 2011

Chief Mark Hall
Palm Springs Police Department
230 Cypress Lane
Palm Springs, Florida 33461

Re: RQO 11-063
Gift Law

Dear Chief Hall,

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

YOU ASKED in your email of July 29, 2011, whether your department may solicit and accept donations from a Village vendor in order to refurbish a newly acquired armored vehicle.

IN SUM, since the solicitations are made and donations are used on behalf of the village of Palm Springs Police Department (PSPD) for use solely by the department in conducting its official business, they are not considered to be gifts under the code of ethics. Therefore, Code of Ethics gift regulations pertaining to vendors do not apply.

THE FACTS as we understand them are as follows:

You are the Chief of Police for the Village of Palm Springs (the Village). Recently, the department purchased a 1993 armored vehicle from Brink's Incorporated (Brink's), a nationwide private security firm, for \$10 dollars. Brink's makes these used vehicles available to law enforcement nationwide through this corporate program. Brink's is not a vendor of Palm Springs, nor does the company lobby the Village. The Village's new vehicle needs to be rehabilitated and reconditioned and the PSPD has solicited donations for this purpose from a Village vendor, Republic Services of Florida (Republic). Republic contracts with the Village to provide trash removal services and currently is in its fourth year of a seven-year contract with the municipality.

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

Section 2-444(g)(1)e. specifically exempts gifts solicited or accepted by municipal employees on behalf of the municipality "in performance of their official duties for use solely by the county or municipality for a public purpose." Since the solicitations are made by you as a village employee, on behalf of the

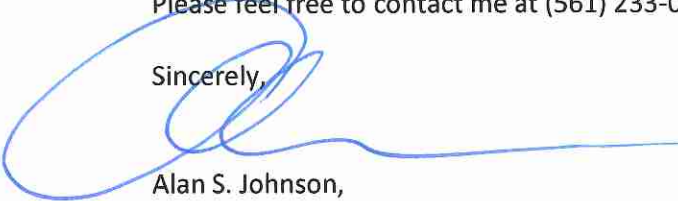
Village for use solely by the PSPD, and the solicited donations will be used to recondition the armored vehicle for public use, they are not gifts as defined by the Code of Ethics.¹ Similarly, the difference in fair market value of the Brink's truck in excess of \$10 would not be considered a gift to the Village from Brink's. Alternatively, any solicited gift not used *solely by the municipality for a public purpose* would be considered a gift and subject to the regulations and requirements of the code. The solicitation or acceptance of funds, while not a gift in this context, must not be based upon a quid pro quo, special privilege, or treatment given, that would constitute a misuse of office.²

IN SUMMARY, you are not prohibited from soliciting and accepting donations for the PSPD from vendors of the Village so long as you are doing so in your official capacity for use solely by the Village for a public purpose.

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/mr/gal

¹ RQO 10-027 (county department soliciting donations for an awning constructed over a county swimming pool), RQO 10-040 (county department soliciting donations for use in county drowning prevention program)

² Section 2-443(a)(b)



Palm Beach County Commission on Ethics

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Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 19, 2011

Diana Grub Frieser, City Attorney
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 11-069
Gift Law/Tickets

Dear Ms. Grub Frieser,

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

YOU ASKED in your submission dated August 15, 2011 whether city employees and officials may accept tickets provided by the city to events held at the Mizner Park Amphitheater and if so, are they reportable gifts.

IN SUM, City employees and officials are not prohibited from accepting tickets to attend non-profit or for-profit events at the Mizner Park Amphitheater. Promoters or event companies who lease space from the City are not vendors as defined by the Palm Beach County Code of Ethics. However, if the value of event tickets exceeds \$100, they are reportable gifts.

THE FACTS as we understand them are as follows;

The City of Boca Raton (the City) operates the Mizner Park Amphitheater (MPA) pursuant to an interlocal agreement between the Boca Raton Community Redevelopment Agency (BRCRA) and the City. The City plans and oversees city events at the MPA, but also leases the space for use by non-profit and for-profit entities. All entities leasing space from the City complete a Facilities Use Agreement, detailing access and use rights for each event. The MPA has two seating options, moveable chairs in the floor section and 18 open air balconies on either wing of the complex. Moveable chairs are placed in each balcony and depending upon the event may be sold by the promoter as individual ticketed seats or at a box or unit price for the entire seating area. As a part of the lease agreement, the City retains at least two balconies for employees and officials. While the City provides the tickets to these events, the value conveyed is not a part of an employee or official's benefit package or employment contract.

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

Section 2-444(a) of the gift law prohibits employees and officials from accepting more than \$100 dollars in the aggregate from a vendor of the municipality they serve over the course of a calendar year. A vendor is defined in §2-442 as follows.

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality Involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager, or employee.

While non-profit and for-profit entities lease event space at the MPA *from* the City, they do not lease or sell goods or services to the city.¹ Accordingly, they are not vendors and §2-443(a)(1) does not apply to this situation.

Section 2-444(g) defines a gift as *"the transfer of anything of economic value"* and §2-444(f) requires employees and officials to complete an annual gift disclosure report, reporting any gift in excess of \$100 unless one of several exceptions apply. There is no exception for tickets provided to employees and officials simply because they are from a governmental entity unless they are a contemplated part of the employee or official's overall compensation package.

The fact that the City operates MPA and leases space to promoters is relevant under the facts presented. By retaining balconies pursuant to a lease agreement, those balconies would not be considered as a part of the leased facility. Therefore, the gift of concert seats would not be gifts from the promoter who has no control over the retained balconies. There would be a value added to the seats based on the value of the ticketed concert price for similar seating, however, the gift would be from the City. This value is calculated pursuant to the Florida state standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code.

The City provided two scenarios first, where promoters market each balcony as a unit or skybox style seating and second, where the promoter sells individual balcony seats at a ticketed "market-driven price." The Code of Ethics follows the standards outlined in §112.3148(c), Florida Statutes. When there is no individual ticket price to value an event, the value is determined by dividing the total cost for hosting the event by the number of persons attending the event.² Should the promoter sell balcony units as a whole, then the City would simply need to contact the promoter or the vending entity selling tickets (e.g., Ticketmaster), determine the balcony price and divide that price by the number of seats in the balcony to value the per person cost.³ In the second scenario where ticketed balcony seats are sold as individually, according to §112.3148(h), Florida Statutes, these tickets are valued by the face value of a similar ticket. If the value of the ticket exceeds \$100 it is a reportable gift pursuant to §2-444(f).

¹ §2-444 PBC Code of Ethics, RQO 11-022 (airline-tenants of Palm Beach International Airport are not vendors of the county; they lease gate-space *from* the County, they do not sell or lease goods or services to the County).

² Florida Administrative Code 34-13.500 Gift Valuation Example: The value of a gift provided to several individuals may be attributed on a pro rat basis among all of the individuals. If the gift is food, beverage, entertainment or similar times, provided at a function for more than 10 people, the value of the gift to each individual shall be the total value of the items provided divided by the number of persons invited to the function.

³ See *also*, RQO 11-70 (where the actual gift value attributable to an individual cannot be determined, the total cost of attendance shall be prorated among all attendees)

IN SUMMARY, based on the information you provided, City employees and officials are not prohibited from accepting tickets and attending events hosted at the MPA. First, the promoter is not a vendor as defined under the Code of Ethics. Second, even if a vendor, under the facts of this arrangement the gifts are not from the vendor, directly or indirectly, since the seats themselves were never leased. However, if the gift consists of the value added by the actual concert, the value does emanate from the promoter's event. If the per person value of the tickets exceed \$100, they must be reported as required by the Code of Ethics.

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/mr/gal



Palm Beach County Commission on Ethics

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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 8, 2011

Mr. Connor Lynch
Plumosa School of the Arts Foundation
2501 Seacrest Blvd.
Delray Beach, FL 33444

Re: RQO 11-075
Charitable Solicitation

Dear Mr. Lynch,

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 August 31, 2011 and follow-up e-mails of September 1, 2 and 6, 2011 whether municipal elected officials and employees may participate in a fundraising event for the Plumosa School of the Arts Foundation (PSAF). You also asked if a conflict of interest exists for public employees who are officers or directors of the foundation.

IN SUM, the Code of Ethics does not prohibit elected officials or employees from participating in charitable fundraising events, provided that 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 who sells, leases or lobbies their municipal government, is transparently recorded in accordance with the charitable solicitation requirements of the code.

Public officials or employees who are officers or directors of a non-profit organization may not use their official public position or title, directly or indirectly, to specially financially benefit that organization.

THE FACTS as we understand them are as follows:

The Plumosa School for the Arts Foundation (PSAF) plans to host a "Mayor's Throwdown" (the Event) to be held at Bru's Room Sports Grill in Delray Beach on September 21, 2011. The Event is open to the public. The foundation has invited three municipal mayors (Boca Raton, Delray Beach and Boynton Beach) to act as "celebrity bartenders." The mayors will pour drinks and help pass them out but will not engage in any direct solicitation. All tips go towards PSAF and are placed in one of three tip jars, identified by municipality. The premise of the Event includes a "competition" between mayors as to which municipality raises the most in tips. You plan to have a volunteer stationed at each tip jar in order to log any donations in excess of \$100. The donor will be asked if he or she is a vendor or lobbyist of the municipality but in an abundance of caution, all such donations will be recorded. In addition, the tip jars will not be visible to the mayors during the course of the event. Lastly, to ensure compliance with the code, organizers will announce, in print and orally during the Event, that vendors and lobbyists must identify any cash donation in excess of \$100 to the monitor so that they may be recorded on the log. You have indicated your desire to take these precautionary steps to avoid any inadvertent or unintentional violation of the reporting requirements as well as the appearance that such an unlogged prohibited gift could otherwise be easily made in a cash/tip scenario.

PSAF has had an ongoing campaign to sell name plates on the seats in the auditorium of the school and to sell engraved bricks at the entrance to the auditorium. You plan to continue to solicit these donations at the Event. Bricks sell for \$150, and seats sell for \$500 or \$1000. In order for attendees of the Event to purchase a brick or a chair, they will be required to complete a form that contains a checkbox for vendors and lobbyists of the municipalities involved in the fundraiser. As a cautionary measure, all such donations made at the event will be logged and submitted in accordance with the requirements of the Code of Ethics. No municipal resources will be used at the Event and no vendor with a pending application before any participating municipality will be permitted to donate in excess of \$100.

Two municipal employees serve on the PSAF board or appear on PSAF letterhead. In all instances, they are listed as private citizens and not in their capacity as a public official. None of the "celebrity bartenders" are associated with PSAF. At the Event, you will be speaking as the Chair of PSAF, asking the guests to donate, and will thank the Mayors for volunteering their time.

You have requested an expedited response from the COE.¹

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

Section 2-444. Gift Law

- (a) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than One Hundred Dollars (\$100) from any person or business entity that the recipient knows is a lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
 - (1) An official public action taken or to be taken, or which could be taken;
 - (2) A legal duty performed or to be performed or which could be performed; or
 - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

Section 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 in which he or she knows or should know with the exercise of reasonable care, will result in a financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
 - (7) A nongovernmental group, union, social, charitable, or religious organization of which he or she is an officer or director.

Under the gift law provisions, §2-444(a) prohibits a public employee from soliciting or accepting a gift worth more than \$100 from a vendor or lobbyist in most circumstances. The revised Code of Ethics provides an exception to this prohibition to allow participation by officials and employees in charitable

¹ 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.

fundraising.² However, this exception does require that fundraisers maintain and submit a log of all solicitations or donations in excess of \$100 from vendors or lobbyists doing business or lobbying their public employer. It should be noted that by including solicitation of charitable donations *by any other person or business entity on his or her behalf* the code encompasses the indirect solicitation made by others involved in a charitable fundraiser. The recording of these gifts may therefore be delegated to a third party who actually solicits or accepts the donation.³ Alternatively, as in this instance, scrutiny and notation of any donations subject to the logging requirement would be handled by announcements and monitors put in place by the non-profit organization. Where the 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.

Furthermore, in soliciting donations from vendors or lobbyists, a public employee or official *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions.*⁴ It should be noted that notwithstanding any other provision, a public employee or official may not 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.

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.* Therefore, any municipal employee who is an officer or director of PSAF, may not use his or her position to financially benefit the organization, *in a manner which he or she knows or should know will result in a special financial benefit, not shared with similarly situated members of the general public,* which in this instance would be all other similarly situated charitable organizations. Here, while two employees serve on the board of directors of PSAF, they do so as private citizens and not in their official capacity or title.⁵

THE RATIONALE for allowing public officials and employees to accept or solicit otherwise prohibited charitable donations made by vendors or lobbyists of their respective municipal governments may be found in §2-244(h) of the revised Code of Ethics. As previously stated, as long as no public resources are used and vendors with pending applications are excluded, these gifts are now permitted provided they are recorded for purposes of transparency. Therefore, gifts from vendors and lobbyists in excess of \$100 solicited or accepted by an official, directly, indirectly, or on his or her behalf, are permissible provided a log is kept and transmitted to the COE as required.

Compliance can be easily monitored when donations are attributed to a person or entity, as with a written pledge or check. In regard to cash donations, when facts and circumstances indicate donations are mostly random, anonymous and in small amounts, the need for transparency may be lessened insofar as public perception is concerned. Recently, the COE opined that Palm Beach County Fire Rescue personnel were not prohibited from participating in the annual MDA Fill the Boot Drive, provided that any donation offered in excess of \$100 is identified as to the donor.⁶ In this way, the donor's name could later be cross referenced with the appropriate vendor or lobbyist list and recorded if necessary.

While the facts and circumstances surrounding the proposed "Bartender Throwdown" may be distinguishable from the MDA event, the requirements of the code remain the same. Unlike the MDA

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

³ RQO 11-029, RQO 11-041 (solicitations by third parties on behalf of public officials must comply with logging requirements of the code)

⁴ Section 2-444(h)(3), PBC Code of Ethics

⁵ 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)

⁶ RQO 11-065 (participation in the MDA Boot Drive Fundraiser, where donations are generally anonymous, spontaneous and given in small amounts, by on duty municipal personnel standing on street corners and medians was not prohibited so long as the requirements of §2-444(h) were followed)

fundraiser, the participants in the PSAF event are not random motorists. In addition, the persons soliciting donations are mayors of three municipalities and, therefore, high-ranking officials. The premise of the PSAF event is based upon competition between elected officials and "bragging rights" over which one can garner the most tips. These are meaningful differences in that there may be a public perception that vendors and lobbyists will contribute in part to obtain the good will of the officials with whom they do business. However, so long as there is no *quid pro quo* or other benefit given in exchange, the motive of the donor is not at issue provided the donation is transparent and properly recorded.⁷

The MDA fundraiser rationale applies equally to the PSAF Event so long as the requirements of the code are met. Because the donations will be cash and the facts and circumstances are distinguishable from MDA, you have indicated that PSAF volunteers will take additional steps to ensure that any cash donations in excess of \$100 from vendors or lobbyists of the respective municipalities will be properly recorded and submitted as required by the code.⁸ To ensure anonymity, the tip jars will be hidden from the celebrity bartenders.⁹ In addition, PSAF will post monitors to ensure that otherwise prohibited gifts may be identified and recorded pursuant to the code requirements. Similarly, the PSAF brick/seat purchase form includes a checkbox for lobbyists and vendors of the three municipalities represented in order to identify their status. To ensure transparency, you have indicated that all such purchases will be recorded and submitted within 30 days of the event to the Commission on Ethics.

Lastly, you intend to publicly announce limitations and transparency requirements in order to ensure prospective donors comply with the code. These combined extra layers of scrutiny will serve to eliminate inadvertent violations by vendors, lessen any perception of impropriety and avoid accusations that a public official knew or should have known a prohibited cash gift was given on their behalf.

IN SUM, Based on the facts you have submitted, the direct or indirect solicitation or acceptance by the various mayors of otherwise prohibited gifts in excess of \$100 from vendors and lobbyists is not prohibited, so long as the gift is transparent, not obtained by the use of public resources and is not from vendors with a pending application before their municipality. A log of these gifts must be transmitted to the COE within 30 days of the event. In addition, a gift of any value may not be given in exchange for the past, present or future performance of an official act or legal duty. The PSOA event is not prohibited and gifts in excess of \$100 from vendors and lobbyists of the participating municipal officials are permitted as regulated.

Officers or board members of PSAF who are public employees may not use their official title or position to specially benefit PSAF.

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

⁷ Section 2-442, PBC Code of Ethics defines lobbying as "an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor..." Such an act does not, by itself, constitute a violation of the code.

⁸ Section 2-444(a)(2), PBC Code of Ethics (prohibiting a vendor, lobbyist, principal or employer of a lobbyist from giving a gift in excess of \$100 to a person they know is an official or employee of a municipality of which they sell, lease or lobby)

⁹ Section 2-444(a) requires that the official "knows or should know with the exercise of reasonable care" that the prohibited gift is from a vendor, lobbyist or principal or employer of a lobbyist. Therefore, a truly anonymous gift does not violate the code.



Palm Beach County Commission on Ethics

Commissioners

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Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 9, 2011

Elizabeth Harfmann
Palm Beach County Animal Care and Control
7100 Belvedere Road
West Palm Beach, FL 33411

Re: RQO 11-077
Charitable Solicitations

Dear Ms. Harfmann,

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, on August 30, 2011 whether county employees may use their public email to invite co-workers to an upcoming charity event and whether they may sell raffle tickets associated with the event during their lunch breaks or other non-county time.

IN SUM, you are not prohibited by the Code of Ethics from soliciting donations from other county employees on behalf of the Help Lizzy Heal fundraising event (Fundraiser). The COE cannot opine as to county policy or procedure regarding use of county resources in this manner.

THE FACTS as we understand them are as follows:

You are a county employee in the Animal Care and Control Department.

The Slainte Irish Pub in Boynton Beach is hosting an event for a 6 year old girl who was severely injured in a fire. This event is not associated with any non-profit organization, but is a fundraiser to help support this local family. You would like to invite your co-workers at Animal Care and Control to attend. You also would like to offer county staff the opportunity to purchase raffle tickets ahead of time during your lunch break. None of the raffle prizes are from vendors or lobbyists of the county. Slainte is not a county vendor and the restaurant does not employ a lobbyist. You have not and do not plan to solicit donations from vendors or lobbyists of the County in association with this event. In fact, your sole involvement in the Fundraiser is to publicize the event to your co-workers. Your department director has approved using county email to publicize this event conditional upon review by the Commission on Ethics.

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

Under the gift law provisions, §2-444(a) prohibits a public employee from soliciting or accepting more than \$100 from a vendor or lobbyist who sells, leases or lobbies their government employer. The revised Code of Ethics provides an exception to this prohibition to allow participation by officials and employees in charitable fundraising.¹ This exception requires that fundraisers maintain a log of all solicitations and donations in excess of \$100 from vendors or lobbyists doing business with or lobbying their public employer. Furthermore, in soliciting donations from these persons or entities, a public employee may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions from vendors or lobbyists.² However, so long as you do not solicit from vendors or lobbyists of the county, the code of ethics does not prohibit you from using your email to publicize this event or from soliciting and accepting donations from your co-workers.

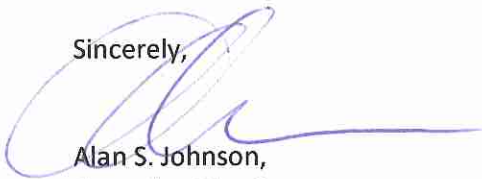
The County may have policies and procedures that address this issue. While the Commission on Ethics will address questions concerning the county code of ethics, responsibility for interpretation and enforcement of county policies or procedures remains with your supervisor or department head.

IN SUMMARY, based upon the facts you have provided, the Code of Ethics does not prohibit you from participating in and soliciting other county employees on behalf of the Help Izzy Heal fundraising event.

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/mr/gal

¹ §2-444(h), PBC Code of Ethics

² §2-444(h)(3), PBC Code of Ethics



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
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Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 14, 2011

Mr. William Lapp
1386 Victoria Drive
West Palm Beach, FL 33406

Re: RQO 11-078
Misuse of Office/Voting Conflicts

Dear Mr. Lapp,

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

YOU ASKED, whether a conflict of interest exists were you to serve on the Grant Review Committee (GRC) for the Palm Beach County Office of Equal Opportunity (OEO), if you serve on the board of directors of three non-profit organizations including one in which your wife is the executive director, and these organizations may apply for grant funding from the GRC.

IN SUM, as an appointed volunteer advisory board member you are not prohibited from serving on the GRC, however, you are prohibited from using your official position as an advisory board member to give a special financial benefit, not shared with *similarly situated members of the general public*, to your spouse, your spouse's outside employer or a non-profit organization of which you are an officer or director. Voting, participating or attempting to influence other GRC members or OEO staff may constitute a misuse of office.

THE FACTS as we understand them are as follows:

The Grant Review Committee (GRC) for the Palm Beach County Office of Equal Opportunity (OEO) is an advisory board established to review grant proposals from non-profit organizations addressing the needs of the disabled in Palm Beach County. Your wife is the executive director of the Florida Outreach Center for the Blind (FOCB) and you serve on its advisory board. You also serve on the board of directors of the Palm Beach Chapter of the National Federation of the Blind (PBCNFB) and the Palm Beach County North Lions Club (PBCNLC). You do not receive compensation from any of these non-profits. In the past, the FOCB has applied for grant funding subject to review by the GRC.

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

Section 2-443(a) prohibits you from using your official position to give your spouse, your spouse's outside employer or a non-profit organization if you are an officer or director "a special financial benefit, not shared with similarly situated members of the general public." As executive director, your wife is employed by FOCB. You are a director of FOCB, PBCNFB and PBCNLC. In this instance you may not financially benefit any of these entities over others similarly situated.

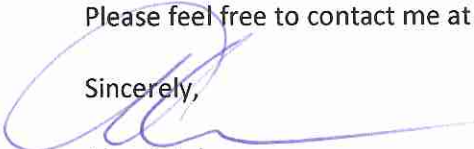
Likewise, §2-443(c) prohibits you from voting on an issue that would result in a special financial benefit attributable to your spouse's employer, the FOCB, or the non-profits you serve as an officer (FOCB, PBCNFB and PBCNLC). The voting conflict section requires you to 1) disclose the nature of your conflict before your board discusses the issue; 2) abstain when the vote takes place and not personally participate in the matter; and 3) File a state voting conflict form (8B) submitting a copy to the clerk and the COE.

IN SUMMARY, based on the facts and circumstances presented, you are not prohibited from serving on the GRC so long as you do not use your appointed office to give your spouse's outside employer, the FOCB, or the non-profits you serve as an officer or director a special financial benefit. When faced with a conflict, you must disclose, not participate and file the required conflict disclosure form 8b.

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/mr/gal



Palm Beach County Commission on Ethics

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Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 13, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-079
Gift Law

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics has considered your request for an advisory opinion, and rendered its opinion at a public meeting on October 6, 2011.

YOU ASKED in your submission dated July 12, 2011 whether the children of Town of Palm Beach (the Town) employees may accept educational scholarships provided by the Palm Beach Country Club and Palm Beach Day Academy.¹

IN SUM, Town employees are not prohibited from accepting scholarship dollars on behalf of their children by the Palm Beach Country Club and Palm Beach Day Academy, provided that there is no quid pro quo or special treatment or privileges given to either organization in exchange for offering these scholarships. Should the value of the scholarships exceed \$100, they are a reportable gift and must be disclosed in an annual gift reporting form filed with the Palm Beach County Commission on Ethics (COE), or in the case of state reporting individuals, a quarterly gift report filed with the State of Florida and copied to the COE.

THE FACTS as we understand them are as follows,

The children of Town of Palm Beach employees are eligible for several similar educational scholarships. First, The Palm Beach County Club Foundation (Foundation) offers a competitive college scholarship available to high school seniors. Applicants are screened and selected by Foundation members, however town elected officials have participated in the selection process in the past. The Foundation is a registered 501(c)3 non-profit organization and is funded through club membership dues. Second, Palm Beach Day Academy (Academy), a local private school, reserves a limited number of student positions for full tuition scholarships awarded to children of Town employees. When one of these positions becomes available, the Academy advises the Town and as in the case of all scholarship programs, the Town generally informs employees of the opportunity. All applications are received privately and the Town is not involved in the screening or selection process of Academy scholarships. Neither the Foundation nor the Academy are vendors or lobbyists of the Town.

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

¹ This request initially emanated from RQO 11-057 but addresses separate issues requiring individual advisory opinions.

Section 2-444(g) defines a gift as "the transfer of anything of economic value" and §2-444(f) requires employees to complete an annual gift disclosure report, reporting any gift in excess of \$100 unless one of several exceptions apply. In addressing the gift law requirements, the Commission on Ethics adheres to the Florida state standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code. The Florida Administrative Code suggests that when a gift is provided indirectly with the intent to benefit a public employee, it may be considered a gift to that employee. As is the case here, where scholarship eligibility is contingent upon a parent's public employment, scholarship funds provided to a child are considered an indirect gift to the parent.² Therefore, these scholarships must be included on the parent's annual gift reporting form.

Section 2-444(e)

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

In addition to the reporting requirement discussed above, no employee may take, fail to take or influence other to take or fail to take any action in exchange for the scholarships provided by the Palm Beach Day Academy or the Palm Beach County Club Foundation.

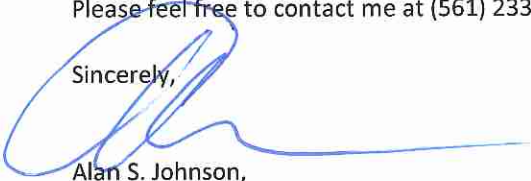
Lastly, §2-443(a)(b) and (c) prohibit a public official or employee from using their official position to obtain a special financial benefit for their children. Therefore, they may not participate in any selection process if they have eligible children applying for either scholarship.

IN SUMMARY, based on the information that you have provided, Town employees are not prohibited from accepting scholarships on behalf of their children from the Palm Beach Country Club Foundation or Palm Beach Day Academy, neither of whom are vendors or lobbyists of the Town, so long as there is no quid pro quo or special treatment or privileges given to either organization in exchange for offering these scholarships. In addition, should the value of these scholarships exceed \$100 they must be reported as required by the Code of Ethics.

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/mr/gal

² See, RQO 11-057 (scholarships available to all residents of the Town are not contingent on public employment and therefore, do not constitute indirect gifts to the public employee parent)



Palm Beach County Commission on Ethics

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Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 13, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: RQO 11-080
Gift Law/Misuse of Office

Dear Mr. Elwell,

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

YOU ASKED in your submission dated July 12, 2011 whether the children of Town of Palm Beach employees may accept educational scholarships sponsored by the Palm Beach Civic Association and the Citizen's Association of Palm Beach and administered by the Town.¹

IN SUM, Town of Palm Beach employees are not prohibited from accepting scholarship dollars on behalf of their children from the Town of Palm Beach. Employees may not use their official position to take, fail to take or influence others to take or fail to take any action in order to secure a scholarship for their child. Should the value of these scholarships exceed \$100, the scholarship funds are a reportable gift. As such, it must be disclosed in an annual gift reporting form filed with the Palm Beach County Commission on Ethics (COE), or in the case of state reporting individuals, a quarterly gift report filed with the State of Florida and copied to the COE.

THE FACTS as we understand them are as follows,

The Palm Beach Civic Association (PBCA) and the Citizen's Association of Palm Beach (CAPB) sponsor competitive scholarships, awarded annually, to a child of a Town employee. The Palm Beach Civic Association is a volunteer organization that encourages residents to take an active interest in Town Affairs, promotes political responsibility through education and advocacy of public policy and supports local government in increasing efficiency, effectiveness and quality of service. The Citizen's Association of Palm Beach is an organization dedicated to protecting, preserving and improving the Town with an emphasis on the interests of condominium and co-operative unit owners. The Town's human resources department receives applications and the selection committee is comprised of the Town's Human Resources Director and one representative from each of the sponsoring organizations. Scholarships are

¹ This request contained separate issues requiring individual advisory opinions. Additional related opinions will reference RQO 11-057.

funded by membership dues; there is no fundraising associated with these scholarships. The PBCA and the CAPB do not sell, lease to or lobby the Town of Palm Beach.

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

Sec. 2-443(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;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

Unlike the scenarios addressed by this Commission in RQO 11-057, RQO 11-079 and RQO 11-081, the Town is involved in selecting the recipients of these scholarships. Accordingly, no Town employee may use their official position or influence others to use their official position in order to secure a special financial benefit for their child.

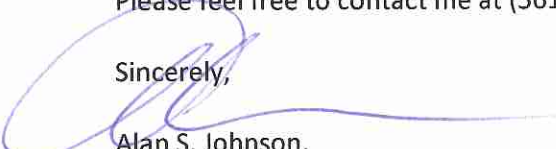
Section 2-444(g) defines a gift as *"the transfer of anything of economic value"* and §2-444(f)(2)b requires employees to complete an annual gift disclosure report, logging any gift in excess of \$100 unless one of several exceptions apply. In addressing the gift law requirements, the Commission on Ethics adheres to the state standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code. The Florida Administrative Code suggests that when a gift is provided indirectly with the intent to benefit a public employee, it may be considered a gift to that employee. As is the case here, where scholarship eligibility is contingent upon a parent's public employment, scholarship funds provided to a child are considered an indirect gift to the parent. Therefore, these scholarships must be included on the parent's annual gift reporting form.

IN SUMMARY, based on the information that you have provided, the children of Town employees are not prohibited from accepting scholarships from PBCA and the CAPB, however should the value of these scholarships exceed \$100 they must be reported. No Town employee may use their official position to secure a scholarship for their child.

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/mr/gal



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 13, 2011

Shelley Vana, County Commissioner
Palm Beach County Board of County Commissioners
310 North Olive Avenue, Suite 1201
West Palm Beach, FL 33401

Re: RQO 11-082
Gift Law/Business Development Board

Dear Commissioner Vana,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion. The opinion rendered is as follows.

YOU ASKED in your email dated September 8, 2011, whether it violates the Palm Beach County Code of Ethics for you to accept free admission for two (2) persons to the 2011 Business Development Board Gala, (the BDB Gala), scheduled to be held on September 17, 2011 at "the Breakers" in Palm Beach, from Mr. Kenneth Kahn, President of LRP Publications, Inc. Additional information was obtained from Mr. Kahn by COE Staff via email.

IN SUM, based on the facts presented, you are not prohibited under the PBC Code of Ethics from accepting complementary admission for you and a guest to the BDB Gala from Mr. Kenneth Kahn. Because neither Mr. Kahn nor his employer, LRP Publications, Inc., are vendors, lobbyists, principals or employers of lobbyists who lobby, lease or sell to Palm Beach County, acceptance of complementary admission for yourself and a guest to the BDB Gala from Mr. Kahn, regardless of the value, does not violate the gift law sections of the Code of Ethics.

Because the total value of the tickets is \$500 (based on the event flyer you submitted) it must be timely reported on your State of Florida Quarterly Gift Disclosure Form (Form 9), and a copy sent to the PBC Commission on Ethics.

THE FACTS as we understand them are as follows:

You are a sitting County Commissioner on the Palm Beach County Board of County Commissioners. As such, you are under the jurisdiction of the Palm Beach County Code of Ethics. On Wednesday, August 24, 2011, you received an email message from Mr. Kenneth Kahn, President of LRP Publications, Inc., inviting you and a guest of your choice to attend the BDB Gala as his guests. The BDB Gala is to be held at "the breakers" resort in Palm Beach on September 17, 2011. According to an invitation "flyer" you provided, the cost of each individual admission to the BDB Gala is valued at \$250, for a total cost of \$500 for both you and your guest to attend.

The BDB is a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County. Mr. Kahn is a member of the BDB Gala Host Committee, and the invitation to you was made on behalf of the BDB. They are a vendor of the county but do not employ lobbyists.

Mr. Kahn indicated in his invitation to you that he is not a lobbyist. The Palm Beach County Lobbyist Registration Database verified this information, and also indicated that neither Mr. Kahn nor his employer, LRP Publications, Inc. are principals or employers of lobbyists, who lobby Palm Beach County. Mr. Kahn also advised COE staff via an email that neither he, nor his employer, are vendors of Palm Beach County, or principals or employers of lobbyists that lobby Palm Beach County.

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

Sec. 2-444. Gift law.

(a)(1) *No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable. (Emphasis added)*

Subsection (e) also states that no person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of any present or future public action taken, or any legal duty performed, or to be performed. Subsection (f) requires that an elected official who receives a gift in excess of \$100 report the gift in accordance with state law and to submit a copy of the report to the PBC Commission on Ethics.

Section 2-444(g) defines "gift" and lists a number of exceptions to the definition:

(g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.

(1) Exceptions. The provisions of subsection (g) shall not apply to:

j. Expenditures made in connection with an event sponsored by a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County or the municipalities as applicable, provided the sponsor organization does not employ a lobbyist, and further provided that the invitation to the event is made by a representative of the sponsor organization and the representative is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the expenditure must be disclosed in accordance with the gift law reporting requirements of subsections 2-444(f)(1) and (f)(2).


With the exception of reporting requirements, expenditures made by an entity as defined in 2-444(g)(1) are not considered gifts so long as the non-profit organization does not employ a lobbyist and the invitation to the event is made by a representative who is *not otherwise a vendor, lobbyist, principal or employer of a lobbyist*. BDB is a nonprofit organization as contemplated by this subsection.

IN SUMMARY, based on the facts presented, the Palm Beach County Code of Ethics does not prohibit you, as a Palm Beach County Commissioner, from accepting free admission for yourself and a guest to the BDB Gala as guests of Kenneth Kahn, President of LRB Publications, Inc. so long as the value of the admission is reported in accordance with state law and the applicable provisions of the PBC Code of Ethics and the benefit is not given as a quid pro quo in exchange for an official action taken or legal duty performed .

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/meb/gal



Palm Beach County Commission on Ethics

Commissioners

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Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 19, 2011

William Orlove, Vice Mayor
City of Boynton Beach
100 E. Boynton Beach Blvd.
Boynton Beach, FL 33425

Re: RQO 11-083
Gift Law

Dear Vice Mayor Orlove,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion. The opinion rendered is as follows.

YOU ASKED in your email dated September 9, 2011, whether it violates the Palm Beach County Code of Ethics for you, in your official position as the Vice Mayor of Boynton Beach, to solicit donations from local businesses, if these items are solicited for a City-sponsored event. Additional information was provided to COE staff via supplementary email exchanges.

IN SUM, the Code of Ethics does not prohibit you from soliciting donations from local businesses in your official position as Vice Mayor of Boynton Beach, so long as the donations are given to the City for use in conducting its official business, including a City sponsored special event, and not based on any *quid pro quo* or other improper reason.

THE FACTS as we understand them are as follows:

You are the Vice Mayor of the City of Boynton Beach. Boynton Beach is planning a City sponsored event in which they will provide a complementary wedding for a couple. To this end, you wish to assist this effort by soliciting donations of wedding related goods and services from local businesses, within your official capacity as Vice Mayor. All donations will be accepted by the City through their Recreation Department, and given as a prize during the event. Some prize values may exceed \$100, and some donor businesses may be City vendors. No official or employee of Boynton Beach is eligible to enter the giveaway.

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

Section 2-444(a)(1), *Gift law*, generally prohibits any county or municipal official or employee from soliciting or accepting any gift that is valued at greater than \$100, from any person or entity.... [that] is a vendor, lobbyist, principal or employer of a lobbyist. Similarly, Section 2-444(c) makes it a violation for any county or municipal official or employee...to knowingly solicit a gift of any value from a vendor...where such a gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.

Under the facts as you presented, these donations are not for the personal benefit of you or any other official or employee of the City, and are donated directly to the City Recreation Department for disbursement at a special event. As such, they are not considered to be prohibited gifts. Under the facts you presented, this is a City sponsored event; a government function which constitutes a public purpose. In several previous advisory opinions, this commission has opined that gifts solicited or accepted by a public official or employee on behalf of their government for use solely by that government entity for a public purpose are not considered gifts under the code.¹

Section 2-444(e) prohibits any person from giving an official or employee a gift, or for the official or employee to accept any gift, if given or accepted because of the performance of any past, present or future public action.

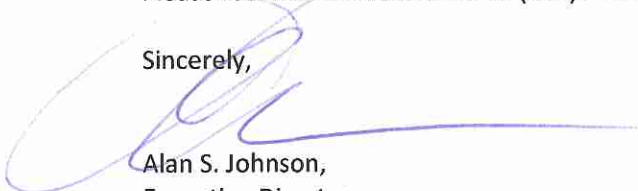
Under this provision, you must take care that the donations made by local businesses are not done based on any *quid pro quo* or other improper reason.

IN SUMMARY, the Code of Ethics allows you to solicit or accept donations from any local business, in your official capacity as Vice Mayor, so long as these donations are directed to the City, and used solely for a City purpose.

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/meb/gal

¹ RQO 10-027, RQO 10-040 §2-444(g)1e



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 16, 2011

Mr. James M. Reid, Jr.
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411-3815

Re: RQO 11-086
Misuse of public office or employment

Dear Mr. Reid,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion. The opinion rendered is as follows.

YOU ASKED in your email dated September 13, 2011, whether it violates the Palm Beach County Code of Ethics for employees of Palm Beach County Fire Rescue to participate as a group in the Florida or Powerball Lotteries. You further asked, if you use your personal computer at home to scan copies of lottery tickets purchased, may you email these copies to your coworkers using the county email system.

IN SUM, the Palm Beach County Code of Ethics does not prohibit county or municipal officials or employees from participation in the Florida or Powerball Lottery, either individually or as a group. However, while not within any Code prohibition, participation by on-duty personnel, or the use of a governmental computer or email system for personal purposes, such as to distribute copies of the lottery tickets to fellow employees, may be governed by workplace policies which would have to be addressed through county or PBFR management.

THE FACTS as we understand them are as follows:

You are an employee with Palm Beach County Fire Rescue (PBFR), a Palm Beach County governmental agency. When the Florida Lottery and/or the Powerball Lottery reach a particular payout amount, you and other PBFR employees, pool your funds and purchase lottery tickets. Participation in the lottery is open to any PBFR employee working at Fire Station 73. Once the tickets are purchased, they are scanned into a computer, and emailed to all participants. You also stated that you have the ability to email these tickets via your home computer to employees.

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

There are no sections of the Palm Beach County Code of Ethics that specifically prohibit or regulate the issue you present. Section 2-443(a), *Misuse of public office or employment*, prohibits the use of your position as a county employee to obtain or give a "special financial benefit" to yourself or other

specified persons or entities, not available to similarly situated members of the general public. However, that section does not apply to the facts you present since participation in the lottery is legal, available to anyone and administered by the state government.


Section 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 any other person. However, under the Code, the term "corruptly" means, "done with wrongful intent," and "inconsistent with the proper performance of his or her public duties." While the use of the county email system for personal messages may be prohibited under county or PBFR policy, under these facts it would not rise to the level of being a corrupt misuse.

IN SUMMARY, based upon the facts you have submitted, the Palm Beach County code of Ethics does not prohibit county employees from playing the Florida or Powerball lotteries, which are both authorized and sanctioned lottery systems by the State of Florida, either individually or as a group. Further, the use of county email to send personal messages as described does not reach the level of being a *corrupt misuse of official position*. The COE cannot opine as to whether such actions are prohibited, limited or regulated by county or PBFR policy.

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/meb/gal



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

September 26, 2011

Karen T. Marcus, Commissioner
Palm Beach County Governmental Center
301 N. Olive Ave
West Palm Beach, FL 33401

Re: RQO 11-087
Charitable Solicitation

Dear Commissioner Marcus,

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

YOU ASKED in your submission dated September 13, whether you may submit a letter of support on behalf of a non-profit organization seeking grant funding in your capacity as County Commissioner.

IN SUM, you are not prohibited from soliciting grant funding using your official title as County Commissioner on behalf of the Florida Public Health Institute and Jupiter Community Health Services, Inc., so long as you are not an officer or director of the non-profit recipient and any grant monies received from a vendor, lobbyist or principal or employer of a lobbyist of Palm Beach County are recorded in accordance with the transparency requirements of the Code of Ethics.

THE FACTS as we understand them are as follows:

You are a County Commissioner representing District 1, an area that may be generally classified as North Palm Beach County. The Town of Jupiter, a municipality within your district, has asked you to sign a letter of support for a grant proposal to establish a primary care clinic to address the needs of medically underserved populations in Jupiter and the North County area. The Florida Public Health Institute (FPHI), a 501(c)3 non-profit entity designed to improve health care systems, will be seeking the grant and the funds would be managed by Jupiter Community Health Services (JCHS). JCHS is a separate 501(c)3 organization established by the FPHI and Jupiter Medical Center (JMS). Your letter of support would be potentially submitted to three foundations, the Quantum Foundation (Quantum), Palm Healthcare Foundation (PHF) and Allegany Franciscan Ministries (AFM). PHF is a vendor of the County; Quantum and AFM are not, nor do they employ lobbyists who lobby Palm Beach County. You are not an officer or director of any entities involved in the grant proposal.

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:

Sec. 2-444 Gift Law

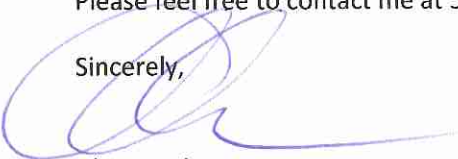
Sections 2-444 (a)(1) prohibits county elected officials and employees, or any other person or business entity on his or her behalf, from soliciting or accepting a gift greater than \$100 in the aggregate for the calendar year from a vendor, lobbyist, principal or employer of a lobbyist who lobbies the county. According to §2-444(h)1 of the revised Code of Ethics¹, public officials may solicit donations, or as in this scenario, grant dollars, provided a detailed log is maintained of *all donations* in excess of \$100 from vendors, lobbyists, principals and employers of lobbyists of that official's governmental entity, and the log is submitted within 30 days of the solicitation to the Commission on Ethics. Accordingly, you would need to provide a record of the grant dollars provided by Palm Healthcare, the only participating organization that is a vendor of Palm Beach County. Insofar as the gift law is concerned, because you are not an officer or director of JCHS or FPPI, you are not prohibited from using your official title in soliciting or accepting donations on behalf of either entity.²

IN SUMMARY, based on the facts and circumstances submitted, you are not prohibited from submitting a letter of support in your official capacity as a Palm Beach County Commissioner for the North County healthcare grant application. Should any of the grant funds be awarded to FPPI and JCHS, a log will need to be submitted of any grant money solicited or received from a PHF, a vendor of the county, in accordance with the transparency requirements of the Code of Ethics.

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/mr/gal

¹ 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.

² RQO 11-029 (An official or employee may not use their official position in soliciting on behalf of charitable entities that they serve *as an officer or director*; to do so would *per se* constitute using one's official position to specially financially benefit the charity they serve in violation of §2-443(a)(7))

VIII – Public Safety Employee Programs for the Town of Palm Beach

RQO 11-056 Peter Elwell

The Town Manager of the Town of Palm Beach (the Town) asked whether Town of Palm Beach Police Department (PBPD) employees may accept emergency financial assistance grants from the Palm Beach Police Foundation (PBPF). When employees of the PBPD have suffered some personal hardship, such as a fire at their home or an uninsured medical need for themselves or their family, the PBPF has made emergency financial assistance grants to these employees. The PBPF accepts gifts and donations from the public and PBPD employees solicit on behalf of the organization. As of fiscal year 2010, the directors of PBPF manage over 1.4 million dollars in assets. In addition to the scholarship program discussed in RQO 11-081 and emergency grant aid, the PBPF provides funding for the Palm Beach Crime Watch Program and for training, equipment and other operational needs of the PBPD.

Staff submits the following for COE approval: Town employees are prohibited from soliciting donations on behalf of the PBPF from vendors or lobbyists of the Town. PBPD employees may not, in their official capacity, solicit *any person or entity* for the PBPF; to do so would *per se* constitute using one's official position to specially financially benefit themselves. No Town employee may solicit or accept any donation as a quid pro quo or other exchange for the past, present or future performance of an official act or legal duty. Emergency financial assistance grants must be reported on the employee's annual gift reporting form. Funds currently solicited by employees and directly earmarked solely for PBPD operational use are not considered gifts as defined under the code.

While not prohibited under the Code of Ethics, programs such as these may create an appearance of impropriety where large donations are given and where such a direct financial benefit is received. This is especially true if official acts of the PBPD are of a discretionary nature. In its request for an advisory opinion, the Town asked whether the potential conflicts presented by these grants, might be remedied if the PBPF funds were adopted and administered by the Town. The Commission concurs with the Town's assessment that should the Town find this program to be for a public purpose and if the Town were to directly accept the donations on behalf of its employees and distribute these donations accordingly, the transparency and accountability concerns surrounding the current program would be mitigated. Donations solicited or accepted on behalf of the public entity for use solely by the Town for a public purpose, i.e., the benefit of Town employees, are not considered gifts under the code and the gift law would therefore not apply. Any abuses in this scenario would be captured under the financial and corrupt misuse sections of the code.

RQO 11-081 Peter Elwell

The Town Manager of the Town of Palm Beach (the Town) asked whether the Town police, fire-rescue and paramedics personnel may participate in fundraising events on behalf of several scholarship programs where their children may be eligible to receive scholarship dollars from those funds. These programs include the Palm Beach Police Foundation (PBPF), the local Fraternal Order of Police Lodge (FOP) and the Palm Beach Firefighters and Paramedics Education Fund (PBFPEF).

Staff submits the following for COE approval: the Code of Ethics prohibits public employees from participating in charitable fundraising in the following circumstances:

- Public officials or employees who are officers or directors of a non-profit organization, or who have a dependent child who may become eligible to receive scholarships, or are participants in any ongoing program established by these organizations, may not use their official public position or title, directly or indirectly, to specially financially benefit themselves, their children or the charitable organization.
- Public officials and employees may not solicit or accept anything of value because of the performance of an official act, or the past, present or future performance or violation of a legal duty.
- Public officials and employees may not solicit a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the municipality they serve for their own personal benefit, the benefit of their relatives or household members or *the benefit of another employee or their relatives or household members*.

Town employees are not prohibited from soliciting or accepting donations for scholarship programs from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists of the Town, so long as there is no quid pro quo or other benefit given for an official act or the past, present or future performance of a public duty, and so long as they do not use their official position or title if they are *eligible for or receiving grant benefits*.

While not prohibited under the Code of Ethics, programs such as these may create an appearance of impropriety where large donations are given and where such a direct financial benefit is received. This is especially true of the official acts of the PBPD and PBFR are of a discretionary nature. In its request for an advisory opinion, the Town asked whether the potential conflicts presented by these scholarships, might be remedied if the scholarship programs were adopted and administered by the Town. As in the companion opinion, RQO 11-056 (PBPF emergency grants), the Commission concurs with the Town's assessment that should the Town find this program to be for a public purpose and if the Town were to accept the donations on behalf of its employees and oversee the distribution of the scholarship dollars, the transparency and accountability concerns surrounding the current program would be mitigated. Donations solicited or accepted on behalf of the public entity for use solely by the Town for a public purpose, i.e., the benefit of Town employees, are not considered gifts under the code and the gift law would therefore not apply. Any abuses in this scenario would be captured under the financial and corrupt misuse sections of the code.

October 7, 2011

Peter B. Elwell , Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: RQO 11-056
Charitable Fundraising by Police and Fire Rescue Organizations

Dear Mr. Elwell,

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 October 6, 2011.

YOU ASKED in your submission dated July 12, 2011 whether Palm Beach Police Department employees may accept emergency financial assistance grants from the Palm Beach Police Foundation.¹

In addition, you requested that if such grants were prohibited under the Code, whether these concerns would be alleviated by the Town of Palm Beach (the Town) administering the funds and overseeing the application process.

IN SUM, PBPD employees are not prohibited from accepting scholarship or emergency financial assistance grants from the Palm Beach Police Foundation (PBPF). However, since all PBPD employees are eligible to receive an educational or emergency grant should the need arise, solicitations for donations are considered solicitation for their own, as well as their fellow employees', financial benefit. While accepting grants is not prohibited, no PBPD employee, or any other person on his or her behalf, may solicit donations from a vendor or lobbyist of the Town where the funds are to be used for his or her personal benefit, the benefit of a relative or household member, or the benefit of any other PBPD employee or their relative or household member. By contrast, employees are not prohibited from soliciting funds from vendors or lobbyists of the Town provided the donations are solicited or accepted and specifically earmarked for use solely by the Town for a public purpose, such as the purchase of police equipment or funding of a PBPD program.

Additionally, public employee may not use their official position to obtain a financial benefit for themselves or their relatives that is not available to similarly situated members of the general public. Solicitation for personal benefit while in uniform, or otherwise in an official capacity, is prohibited.

¹ This request contained separate issues requiring individual advisory opinions. Additional related opinions will reference RQO 11-057. Specifically, this is a companion opinion to RQO 11-081 (PBPF scholarship grants)

Lastly, employees must take great care not to use their position to take, fail to take or influence others to take or fail to take any action in exchange for permissible donations. As the grants for employees will always be in excess of \$100, they must be reported in accordance with the procedures outlined in the Code of Ethics.

THE FACTS as we understand them are as follows,

The Palm Beach Police Foundation (PBPF) accepts donations and gifts from the public. It manages funds in excess of 1.4 million dollars and makes grants to the Town of Palm Beach for training, equipment and other operational needs of the Palm Beach Police Department. In addition, the PBPF provides funding for the Palm Beach Crime Watch program and to the employees of the Palm Beach Police Department (PBPD) for educational scholarships that are the subject of RQO 11-081. When employees of the PBPD have suffered some personal hardship, such as a fire at their home or an uninsured medical need for themselves or their family, the PBPF has made emergency financial assistance grants to these employees. Since the foundation was established in 2006, these grants have rarely been given and according to PBPF President John F. Scarpa, are "decided on a case by case basis, and [are] reviewed and approved by the full board of directors." Payment is made directly from the Foundation to the employee, with no knowledge or involvement of the Town. No employee of PBPD serves as an officer or director of the PBPF, but many officers are actively involved in fundraising for the organization including attending the Annual Policemen's Ball.

The Town requires all employees, pursuant to Section 7-14.3 of the Town Employee Personnel Manual, to report anything of value received in excess of \$100 from any individual, business or organization located in or doing business in the Town for any reason, including hardship or educational assistance for dependants. Employees are required to submit the Town's "Acceptance of Favors and Gratuities Disclosure Notice" within 7 calendar days of receiving the item of value.

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

Sec. 2-443(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) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

No employee or official may use their official position or employment to obtain a special financial benefit for themselves² or their spouse, domestic partner, household member or relative. In its current state, fundraising performed by PBPD employees on behalf of the PBPF creates an emergency fund for their own

² 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)

financial benefit. Accordingly, lending one's name and official title to fundraise for the PBPF would constitute using their position to specially financially benefit themselves, resulting in a violation of the misuse of office section of the code.³ Similarly, employees would be in violation of §2-444(c) even if they were to solicit in their private capacity, whether directly, indirectly or by another person on their behalf, if the solicitation is from a vendor or lobbyist of the Town.

Section 2-444(c) states as follows:

No... employee, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. (emphasis added)

While the Code of Ethics ordinarily would allow a public employee to solicit or accept donations on behalf of a charitable organization provided the vendor and lobbyist donations in excess of \$100 are recorded and filed with the COE⁴, the code prohibits such solicitation from vendors or lobbyists if the gift will benefit *any* Town public employee, their relatives or household members.⁵ Accordingly, solicitation of non-vendors or lobbyists is prohibited. That being said, Town employees may solicit donations for a public purpose, as provided by §2444(g)(1)e, so long as those donations are specifically solicited and resulting funds are earmarked for the operational needs of the PBPD.

Section 2-444(e) states as follows:

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;*
- (2) A legal duty performed or to be performed or which could be performed; or*
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.*

No employee may take, fail to take or influence others to take or fail to take, any official action because of the hardship funds provided by the Foundations or donations made by individual donors known to a public employee.

Section 2-444(g) defines a gift as "*the transfer of anything of economic value*" and §2-444(f)(2)b requires employees to complete an annual gift disclosure report, logging any gift in excess of \$100 unless one of several exceptions apply. Since the circumstances dictate that the amount of the emergency financial assistance grants will always exceed \$100, employees who receive such assistance must report these gifts on their annual gift reporting form.

THE RATIONALE for limiting the solicitation of donations by employees and officials from lobbyists and vendors of their public employer is grounded in the desire to avoid such solicitation for personal benefit. In addition, general reporting requirements and other limitations serve to increase transparency and remove the appearance that donations are made to obtain access or engender good will of those employees or officials. The Commission on Ethics is empowered to issue an advisory opinion to *establish the standard of public duty, if any*, regarding the facts of the situation submitted.⁶ Accordingly, Commission on Ethics Rules of Procedure provide that "*if deemed appropriate by the COE, additional comment regarding ethics,*

³ RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form of financial benefit from a non-profit organization they may not use their official title to specially financially benefit that charity)

⁴ §2-444(h)(2)

⁵ §2-444(c)

⁶ Revised Commission on Ethics Ordinance, §2-260.9

appearance of impropriety or similar advice to the requesting party based upon the factual scenario as presented" may be given.⁷ The Commission on Ethics normally would not opine as to whether, in order to prevent the appearance of impropriety, you as Town Manager should place additional restrictions on acceptance of these scholarship or emergency funds.

However, while not prohibited under the Code of Ethics, programs such as these may create an appearance of impropriety where large donations are given and where such a direct financial benefit is received. This is especially true if official acts of PBPD and PBFR are of a discretionary nature. Officers and Department personnel must take great care to not take an official action, or perform, fail to perform or violate a legal duty because of a gift that was solicited or accepted by them or on their behalf as prohibited by sec. 2-444(e). For example, a Town police officer may not take an action during a traffic stop based upon his or her knowledge of the status of the driver as a PBPF donor.

In your advisory opinion request, you asked whether these potential conflicts, including solicitation prohibitions, might be remedied by the PBPF being adopted and administered as a Town function. We concur with your assessment that should the Town find this program to be for a public purpose and if the Town were to accept the donations on behalf of its employees and distribute these donations accordingly, the transparency and accountability concerns surrounding the current program would be mitigated. Donations would thereby be solicited or accepted on behalf of the public entity for use solely by the Town for a public purpose, i.e., the benefit of Town employees.⁸ As with existing donations from the PBPF for training and equipment, the donations would not be considered gifts under the code and the gift law would therefore not apply.

IN SUMMARY, based on the information that you have provided, Town employees may not solicit donations on behalf of the PBPF from vendors or lobbyists of the Town of Palm Beach. Nor may they solicit or accept any donation as a quid pro quo or other exchange for the past, present or future performance of an official act or a legal duty. Emergency financial assistance and scholarship grants must be reported on an employee's annual gift reporting form. Should the Town take over administration of the grants, the above prohibitions and reporting requirements would not apply; donations solicited or accepted by the Town for a public purpose are not gifts for purposes of the code of ethics. Similarly, funds currently solicited by employees and directly earmarked solely for Town use are not considered gifts as defined under the code. Notwithstanding, an employee may not use his or her official position, or offer any quid pro quo or other benefit in exchange for donations, in violation of the financial misuse or corrupt misuse provisions of the Code of Ethics.

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/mr/gal

⁷ COE Rules of Procedure 2.8(f)

⁸ §2-444(g)(1)e

October 7, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-081
Conflict of Interest/Misuse of Office

Dear Mr. Elwell,

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 October 6, 2011.

YOU ASKED in your submission dated July 12, 2011 whether Town of Palm Beach (the Town) police, fire-rescue and paramedics personnel may participate in fundraising events on behalf of several scholarship programs where their children may be eligible to receive scholarship dollars from those funds.¹

In addition, you asked if these scholarships are prohibited or limited under the Code, whether these concerns would be alleviated by the Town administering the funds and overseeing the application process.

IN SUM, the Code of Ethics prohibits public employees from participating in charitable fundraising in the following circumstances:

- Public officials or employees who are officers or directors of a non-profit organization, or who have a dependent child who may become eligible to receive scholarships, or are participants in any ongoing program established by these organizations, may not use their official public position or title, directly or indirectly, to specially financially benefit themselves, their children or the charitable organization.
- Public officials and employees may not solicit or accept anything of value because of the performance of an official act, or the past, present or future performance or violation of a legal duty.
- Public officials and employees may not solicit a gift of any value from a vendor, lobbyist, principal or employer or a lobbyist who sells, leases or lobbies the municipality they serve for their own personal benefit, the benefit of their relatives or household members or the benefit of another employee or their relatives or household members.

Public safety employees are not prohibited from soliciting or accepting donations for scholarship programs from persons and entities who are not vendors, lobbyists, principals or employers of lobbyists who sell, lease or lobby the Town, as long as there is no quid pro quo or other benefit given for an official act or the past, present or future

¹ This request contained separate issues requiring individual advisory opinions. Additional related opinions will reference RQO 11-057. Specifically, this is a companion opinion to RQO 11-056 (PBPF emergency assistance grants to employees)

performance of a public duty, and so long as they do not use their official position or title if they are eligible for, or receiving grant benefits.

THE FACTS as we understand them are as follows,

Since 2006, the Palm Beach Police Foundation (PBPF) has provided more than \$300,000 in scholarship funding to children of the Palm Beach Police Department (PBPD) employees, about \$8,000 annually per child. In addition to these scholarships, PBPF provides funding for police department supplements such as additional training and equipment and emergency financial assistance to officers.² As of fiscal year 2010, the directors of PBPF manage over 1.4 million dollars in assets. No police officer or employee of the police department serves as an officer or director of the PBPF, but many officers are actively involved in fundraising for the organization including attending the Annual Policemen's Ball.

The local Fraternal Order of Police Lodge (FOP), provides scholarships to the dependent children of FOP members, under age 25 who maintain a GPA of 2.0 or above as a full-time student at an accredited college or university. A committee of current and former Town police officers screens applicants and those who meet the minimum requirements are forwarded to the FOP executive Committee, which determines the amount of the scholarships. This past year, the scholarships were \$1,000 each. Scholarship dollars are financed by fundraising events hosted throughout the year.

Finally, the Palm Beach Firefighters and Paramedics Education Fund (PBFPEF), provides IRS 529 accounts for the children of employees of the Town's Fire-Rescue Department (PBFRD) and/or direct payments to qualified private educational institutions on behalf of students who are children of employees of the PBFRD. The primary fundraiser for the PBFPEF is the annual Fireman's Ball. Funds raised each year are disbursed equally to all qualified dependants of PBFRD employees. PBFRD employees are involved in fundraising for this event and several employees serve on the PBFPEF's Board of Directors.

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

Misuse of Office and Charitable Solicitations

Section 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;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

² PBPF emergency financial assistance grants are the subject of a separate advisory opinion, RQO 11-056.

No employee or official may use their official position or employment to obtain a special financial benefit for themselves, their children, or a non-profit that they serve as an officer or director.³ As an officer or director of a charitable organization or as an employee whose child is eligible for scholarship dollars, lending one's name and official title to fundraise for that charity would constitute using their position *per se* to specially financially benefit themselves or the charity, to the exclusion of all other charitable organizations similarly situated, resulting in a violation of the misuse of office section of the code.⁴

Additional Gift Law Requirements

Section 2-444(g) defines a gift as "*the transfer of anything of economic value*" and §2-444(f) requires employees to complete an annual gift disclosure report, reporting any gift in excess of \$100 unless one of several exceptions apply. In addressing the gift law requirements, the Commission on Ethics adheres to the Florida state standards outlined in §112.3148, Florida Statutes, and Chapter 34 of the Florida Administrative Code. The Florida Administrative Code suggests that when a gift is provided indirectly with the intent to benefit a public employee, it may be considered a gift to that employee. As is the case here, where scholarship eligibility is contingent upon a parent's public employment, scholarship funds provided to a child are considered an indirect gift to the parent.⁵ Therefore, these scholarships must be included on the parent's annual gift reporting form.

Section 2-444(c) states as follows:

No county commissioner, member of a local governing body, mayor or chief executive officer when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. (emphasis added)

An employee of the Town may not solicit anything of value from a vendor or lobbyist of the Town, nor can the solicitation be made by some other person or entity on his or her behalf, if that solicitation is for the benefit of any Town employee, relative or household member.

Section 2-444(e) states as follows:

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

No employee may take, fail to take or influence others to take or fail to take any action because of the scholarships provided by these foundations or by large donors known to public employees.

While the Code of Ethics ordinarily would allow a public employee to solicit or accept donations on behalf of a charitable organization provided the donations are recorded and filed with the COE⁶, the code prohibits such

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 RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form financial benefit from a non-profit they may not use their official title to specially financially benefit that charity)

⁵ See, RQO 11-057 (scholarships available to all residents of the Town are not contingent on public employment and therefore, do not constitute indirect gifts to the public employee parent)

⁶ §2-444(h)(2)

solicitation from vendors or lobbyists if the gift will benefit any Town public employee, their relatives or household members. Solicitation of non-vendors or lobbyists is not prohibited, provided there is no quid pro quo or other benefit given as a result and the solicitation is in an unofficial capacity, if the person soliciting stands to financially benefit.

The Commission on Ethics is empowered to issue an advisory opinion to *establish the standard of public duty, if any*, regarding the facts of the situation submitted.⁷ Accordingly, Commission on Ethics Rules of Procedure provide that *"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"* may be given.⁸ The Commission on Ethics normally would not opine as to whether, in order to prevent the appearance of impropriety, you as Town Manager should place additional restrictions on acceptance of these scholarship dollars.

While not prohibited under the Code of Ethics, programs such as these may create an appearance of impropriety where large donations are given and where such a direct financial benefit is received. This is especially true if official acts of PBPD and PBFR are of a discretionary nature. Officers and Fire Rescue personnel must take great care to not take an official action, or perform, fail to perform or violate a legal duty because of a gift that were solicited or accepted by them or on their behalf as prohibited by §2-444(e).

In your request, you asked whether these concerns would be alleviated by the Town administering the funds and overseeing the application process. As in the companion opinion, RQO 11-056 (PBPF emergency grants), we concur with your assessment that should the Town find this program to be for a public purpose and if the Town were to accept the donations on behalf of its employees and the Town were to distribute these donations accordingly, the transparency and accountability concerns surrounding the current program would be mitigated. Donations solicited or accepted on behalf of the public entity for use solely by the Town for a public purpose, i.e., the benefit of Town employees, are not considered gifts under the code and the gift law would therefore not apply.⁹ Any abuses in this scenario would be captured under the financial misuse and corrupt misuse sections of the code.

IN SUMMARY, based on the information that you have provided, the children of PBFR and PBPD employees are not prohibited from accepting scholarships from the PBPF, FOP or the PBFPEF, however, Town employees may only solicit donations from persons or entities who are not vendors, lobbyists, principals or employers of lobbyists of the Town. No employee may solicit or accept donations as a quid pro quo for an official action, or otherwise in exchange for the performance of their official duty. Moreover, as an officer or director of the charity, soliciting donations on behalf of that charity using one's official position or title would constitute a violation of the misuse of office portion 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/mr/gal

⁷ Revised Commission on Ethics Ordinance, §2-260.9

⁸ COE Rules of Procedure 2.8(f)

⁹ §2-444(g)(1)e.

IX – City of Riviera Beach Discretionary Funds

RQO 11-084 Thomas Masters

The Mayor of the City of Riviera Beach asked whether members of the City Council may direct funds provided by Waste Management (WM), a City vendor, to charitable events, not-for-profit organizations or City functions or projects. Each City Councilperson individually determines which organization or program will receive a donation from WM to the city or charity. The total funds available to the council, pursuant to the City's contract with WM, totals \$90,000 annually.

Staff submits the following for COE approval: The Code of Ethics prohibits any member of a local governing body, or mayor if not a member of a local governing body, or anyone on his behalf, from soliciting or accepting, directly or indirectly, any gift of a value of more than \$100 annually, from any person or entity who is a vendor of a municipality. This prohibition does not apply to gifts solicited or accepted by municipal officials on behalf of the municipality *for use solely by the municipality for a public purpose.*

Under the system created by the City, these "discretionary funds" never become a part of the City of Riviera Beach (RB) general revenue, and instead are given by Waste Management directly to various organizations under the direction of a single elected official. Where monies are never made a part of the City account, but are expended for a specific non-governmental use by a vendor at the direction of a single elected official, these funds are considered a transfer of value within the Code of Ethics. These donations are not made a part of the City account, are not for use solely by the municipality for a public purpose and as such, are not exempt from the vendor-gift prohibition. Therefore, the current system of direct distribution of funds by Waste Management to any non-City entity or program in this manner is prohibited by the Code of Ethics. However, distribution to City programs would not be prohibited, as these funds are made a part of the City account, at which time their expenditure would be used by the City for a "public purpose."

October 7, 2011

Thomas Masters, Mayor
City of Riviera Beach
600 West Blue Heron Blvd.
Riviera Beach, FL 33404

Re: RQO 11-084
Misuse of Office/Gift law

Dear Mayor Masters,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on October 6, 2011.

YOU ASKED in your email dated September 9, 2011, and forwarded to the COE by Riviera Beach City Attorney Pamala Ryan, whether it violates the Palm Beach County Code of Ethics for you and other members of the Riviera Beach City Council to direct \$45,000, semi-annually, from Waste Management of Florida, Inc. (WMF) pursuant to contract, to be donated to "charitable events, not-for-profit organizations, or City functions or projects." Each City Councilperson personally determines what organization will receive up to \$7,500 of the funds semi-annually; however, the donations are made directly by WMF to the event, organization or city project. The total distribution annually is \$90,000. Additional information was provided by Ms. Ryan.

IN SUM, the Code of Ethics prohibits any member of a local governing body, or mayor if not a member of a local governing body, from soliciting or accepting, directly or indirectly, any gift of a value of more than \$100 annually, from any person or entity who is a vendor of a municipality. Under your current system, these "discretionary funds" never become a part of the City of Riviera Beach (RB) general revenue, and instead are given by Waste Management directly to various organizations under the direction of a single elected official. Where monies are never made a part of the City account, but are expended for a specific non-governmental use by a vendor at the direction of a single elected official, these funds are considered a transfer of value within the Code of Ethics definition of gift. Therefore, the current system of direct distribution of funds by Waste Management to any non-City entity or program in this manner is prohibited by the Code of Ethics. However, distribution to City programs would not be prohibited, as these funds enter directly into the City funding stream, at which time their expenditure would be, by definition, for a "public purpose."

THE FACTS as we understand them are as follows:

Waste Management entered into a contract with the City of Riviera Beach to be the exclusive provider for the collection and disposal of residential and commercial solid waste material within the City, Between March 1, 2011 and September 30, 2016. This contract was adopted by the City Council under Resolution Number 13-11, on February 10, 2011. Included within this resolution and contract is Section 23.3, which states in relevant portion:

"As a community benefit to the City, Contractor agrees to contribute the sum of \$90,000 to the City per year for use by elected officials for public purposes. The City Council shall determine by resolution what types of community services will qualify for the program. Forty-five thousand dollars (\$45,000) will be made available for use on October 1st and April 1st of every year until the expiration of this Agreement

and any renewals. Payment will be made by the Contractor, on behalf of the City, directly to the entity designated by the City Council.”

On May 4, 2011, the City Council adopted Resolution number 63-11. This resolution addresses the Waste Management contribution and the process of distributing these funds. Section 1, sub paragraph II, of the resolution states in pertinent part:

“Each elected official shall be entitled to designate up to \$15,000 per year (\$7,500 on October 1st and \$7,500 on April 1st) for public purposes. Public purposes include, but are not limited to, charitable events, not-for-profit organizations, or City functions or projects, including, for example, contributions to the City’s Scholarship Fund or the City’s Housing Trust Fund. Payment will be made directly by Waste Management to the entity/agency/organization chosen by the elected official.”

Based on these resolutions, the City never receives any of the funds directly. The six individual elected officials (five Councilpersons and the Mayor), may each personally determine the distribution of one-sixth of these funds under Resolution 13-11. Once an elected official determines what entity they wish to receive funds, they complete a Request for Donation Form, which is then reviewed by both the City Attorney and the City Manager to make sure the funds are for a “public purpose” as defined in the resolutions. Funds are then distributed directly to the receiving entity by Waste Management. The Council as a whole does not vote on the individual disbursements, but the disbursement itself is placed on a City Council meeting agenda after the fact, and may be discussed by any Council member, the Mayor, or during public comment at this meeting.

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

Sections 2-443(a)(b) and (c) prohibit an public official from using his or her official position to specially financially benefit certain entities or persons in a manner not shared by similarly situated members of the general public. In this instance, a member of the council may not direct the distribution of funds to non-profit entities where they or their spouse or domestic partner is an officer or director. Neither can they specially financially benefit a spouse, relative, outside employer, customer or client or debtor or creditor. Subsection (c) prohibits voting or participating in matters that would financially benefit these persons or entities in a manner not shared with other similarly situated entities or individuals.

The relevant sections of the gift law are as follows:

Sec. 2-444. Gift law.

- (a)(1) No county commissioner, *member of a local governing body*, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, *shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.* (Emphasis added)
- (g) For the purposes of this section, "*gift*" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. (Emphasis added)
- (1) Exceptions. The provisions of subsection (g) shall not apply to:
 - e. *Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose;* (Emphasis added)

THE RATIONALE behind limiting gifts solicited by vendors of a public entity is grounded in the desire to avoid the appearance that these gifts are made to obtain access or engender the good will of public employees or officials. When funds are solicited or obtained from vendors by officials, there is an exception that applies to the limitations and prohibitions only when they are actually *solicited or accepted by the official on behalf of the municipality in performance of their official duties for use solely by the municipality for a public purpose.*

Under the facts and circumstances in this case, although the funds are earmarked by contract, they do not come within the municipal budget to be spent (used) by the municipality directly for public purpose. Although there are resolutions by the municipality establishing the overall structure of this enterprise, the scrutiny and transparency ceases at that point and the process becomes a personal fund doled out by individual councilpersons and approved by staff. Most importantly, the donations are given directly by the vendor to the recipient, without inclusion into the public budget. Any acknowledgement is by discussion at a public meeting after the fact. To the extent that these donations are given to private entities, they would constitute a gift, given by the City vendor on behalf of the councilperson and prohibited if in excess of \$100. There is no such prohibition regarding donations to RB departments or events, as these would in fact be solicited or accepted into the government and spent by the government for public purposes.

If the \$90,000 was given directly to RB, and the municipal council was to determine its distribution in their capacity as the governing body of RB, the decisions of how the council spends the budget would by definition become a *use solely by the municipality for a government purpose.* The indirect distribution of funds by the vendor cannot be so defined.

The COE cannot opine as to the appearance of impropriety that might arise should the contract and policy be revised so that the funds were deposited into the RB budget and expended by individual councilpersons at their discretion. If and when such facts may arise, they must be scrutinized as to the specific program or process. We do make note of the Palm Beach County Grand Jury Reports of Spring Term 2009 and Winter Term 2010.¹ In 2009, the Grand Jury found “that by giving each commissioner millions of dollars to distribute essentially as he/she pleased, the BCC created a process that eliminated oversight, and, at a minimum, politicized the manner of funding.” The appearance of impropriety was such that the Grand Jury recommended that individual discretionary funds be eliminated.

IN SUMMARY, based on the facts presented, the current system of distribution of funds to non-public entities made directly by a City vendor, where a single elected official determines and directs which entity shall receive these funds, is prohibited by Section 2-444(a)(1) of the Code of Ethics as an indirect acceptance or solicitation of a prohibited gift. Distribution to public entities or programs within this system is not prohibited because once the funds are received by the municipality or municipal department they are by definition used for a “public purpose” under the Code.²

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/meb/gal

¹ 2009 Investigation of Palm Beach County Governance and Public Corruption Issues, pp 19-20, 2010 Status Report of the Grand Jury Regarding Palm Beach County Governance and Public Corruption Issues, pp 19-20.

² RQO 10-040, RQO 10-027

X - City of Boca Raton Advisory Board Conflicts

RQO 11-067 Gregory Miklos

A municipal advisory board member asked whether a member of his outside business could represent a customer or client of his firm in front of his board if the board member abstained from voting and did not participate in any part of the decision-making process.

Staff submits the following for COE approval: An advisory board member or official may not use their official position to give themselves, their outside business or a customer or client of their outside business, a special financial benefit not shared with similarly situated members of the general public. Voting on a client's proposal, participating in conversations with or attempting to influence other advisory board members would constitute a misuse of office. In this context, "participate" means that a board member may not present their client's project to their board or take part in any presentation or discussion regarding the project with their fellow board members. They are not prohibited from meeting with staff or other related boards in processing a matter provided they do not use their official position to obtain a benefit. This prohibition extends to the board member, or someone using that board member's official position on their behalf.

The financial misuse and voting conflict sections of the Code of Ethics do not prohibit another person employed by the board member's outside business from representing a customer or client before the board, provided that the board member publically discloses the nature of the conflict, files the required state disclosure form, refrains from voting and does not participate in or influence the process.

RQO 11-076 Diana Grub Frieser

A City Attorney asked whether advisory board members whose appointments require professional licensure authorized by state law and pursuant to city ordinance are subject to the abstention and non-participation requirements of the Palm Beach County Code of Ethics where an exemption exists for these members in Florida State Statutes.

Staff submits the following for COE approval: state law permits local governments to adopt more stringent standards of conduct than those specified in the Florida Code of Ethics provided those standards do not otherwise conflict with the state code. The Palm Beach County Code of Ethics does not ban the establishment of licensure requirements for local advisory boards, however, in certain instances it does more tightly regulate potential financial misuse of the office. Based on the facts and circumstances presented, advisory board members, regardless of any professional licensure requirements associated with their appointment, may not use their appointed office to give themselves, their outside business or a customer or client of their outside business a special financial benefit. When faced with a conflict, they must disclose, abstain, not participate and file the required conflict disclosure form 8b. While they are not prohibited from working with municipal staff to process a matter in the normal course so long as they do not use their official position in the process, they remain subject to all conflict provisions and requirements. The Code of Ethics does not prohibit a business associate or other individual from representing a client's interests before the official's board provided the official discloses, abstains, does not participate in any way and files a conflict of interest form with the clerk and COE.

October 7, 2011

Gregory Miklos
Boca Raton Community Appearance Board
2263 N.W. Boca Raton Boulevard, Suite 112
Boca Raton, FL 33431

Re: RQO 11-067
Voting Conflicts

Dear Mr. Miklos,

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 October 6, 2011.

YOU ASKED as a member of the Boca Raton Community Appearance Board (CAB), whether a member of your outside business may represent a customer or client of your firm in front of the CAB, so long as you abstain from voting and do not participate in any part of the decision-making process.

IN SUM, as an appointed official you are prohibited from using your official position as an advisory board member to give a special financial benefit, not shared with *similarly situated members of the general public*, for yourself, your outside business, or a customer or client of your outside business. Voting on a client's proposal, participating in conversations or attempting to influence CAB members would therefore constitute a misuse of office. The prohibition extends to you, or someone using your official position on your behalf. Therefore, the financial misuse and voting conflicts sections of the Code of Ethics do not prohibit a member of your outside business from representing a customer or client provided that you *publicly disclose the nature of the conflict*, file the required state disclosure form, refrain from voting and do not participate in, or influence the process.

THE FACTS as we understand them are as follows:

You are an architect who serves on the Community Appearance Board (CAB), an advisory board for the City of Boca Raton (the City). The CAB reviews all commercial and multifamily residential projects in the City and all signage (free-standing and on buildings) for aesthetics and code compliance.

Your firm, Miklos and Associates, is based in the City and you are contacted frequently by clients who wish to develop, remodel, or rezone a property they own within the City. As their architect, you meet with the City zoning staff to work out site specifics and other issues. Once the preliminary site, floor and evaluation plans are completed, you present your proposal to the Planning Advisory Board (PAB) for review and discuss the reviewer's comments from related departments such as traffic, fire, utility, zoning or environmental divisions. After these discussions, you make the required revisions to the proposal as needed and then resubmit your plans to the PAB and the City Council. Throughout this process, you will be the member of your firm representing the client. Prior to final approval, this plan

must go before the CAB. At that time you disclose the nature of your conflict- that your firm represents the client's plan subject to the Board's approval, abstain from voting and do not participate in any part of the process, including conversations with staff regarding CAB issues. Subsequent to the abstention, you file a state conflict form as required by statute. In dealing with the CAB and the department within the CAB's authority, another member of your firm presents the project.

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 you from using your official position to give yourself, your outside business, or a customer or client of your outside business a financial benefit, in a manner which you *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.* A customer or client is defined as a person or entity to whom your outside business has supplied goods or services in excess of \$10,000 over the previous 24 months.

Section 2-443(c) similarly prohibits you from voting on an issue or participating in a manner that would result in a special financial benefit attributable to yourself, outside business or customer as previously described. Essentially, the voting conflict section addresses the scenario whereby in voting you would violate the misuse of office prohibitions of the code. In such a scenario you are required to 1) disclose the nature of your conflict before your board discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) File a state voting conflict form (8B), submitting a copy to the CAB clerk and the Palm Beach County COE. The language of §2-443(c) is as follows:

County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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...

In this context, "participate" means that while you may not present your clients project to the CAB or take part in any presentation or discussion regarding your client's project with your fellow CAB board members. You are not prohibited from meeting with and presenting to Zoning staff and other related city advisory boards.¹ However, while you may submit and discuss your client's project with staff prior to the matter coming before the CAB, you may not use your official position to influence the process. The misuse of office and voting conflict prohibitions apply to you personally, or someone using your official title or position at your direction. Therefore, you are not prohibited from working with City staff on your client's project up and until it goes before your board, so long as it is in your professional as

¹ Please note that contacting CAB members about a matter coming before the board may result in a Sunshine Law violation.

compared to your official capacity. Additionally, this provision does not prohibit other owners or employees of your outside business from representing your client's interest in these matters.

IN SUMMARY, based on the facts and circumstances presented, you may not use your appointed office to give yourself, your outside business or a customer or client of your outside business a special financial benefit, not shared with similarly situated members of the general public. When faced with a conflict, you must disclose the nature of that conflict, refrain from participating and file the required conflict disclosure form 8b. The Code of Ethics does not prohibit a business associate or other individual from representing your client's interests before the CAB separate and apart from you or your official office.

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/mr/gal

PROPOSED

October 7, 2011

Diana Grub Frieser, City Attorney
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 11-076
Voting Conflicts

Dear Ms. Grub Frieser,

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 October 6, 2011

YOU ASKED whether advisory board members whose appointment requires professional licensure pursuant to city ordinance are subject to the abstention and non-participation requirements of the Palm Beach County Code of Ethics where an exemption exists for these members in Florida State Statutes.

IN SUM, appointed officials are prohibited from using their position as advisory board members to give themselves, their outside business, or their outside customers or clients a special financial benefit not shared with *similarly situated members of the general public*. While the Florida Code of Ethics may contain exemptions and/or additional requirements that differ from the County code, voting on a client's proposal, participating in conversations or attempting to influence advisory board members would constitute a misuse of office under the Palm Beach County Code of Ethics. The prohibition extends to the official, or someone using their official position on their behalf.

THE FACTS as we understand them are as follows:

You are the City Attorney representing the City of Boca Raton. A member of the City's Community Appearance Board (CAB) contacted the Palm Beach County Commission on Ethics (COE) and asked whether a member of his outside business may represent a customer or client of his architectural firm in front of the CAB so long as he abstained from voting and did not participate in any aspect of the decision-making process.¹ In response to this request, the City provided additional information about the CAB Board, state statutes and Florida Commission on Ethics interpretation of state law. You requested an advisory opinion based on this information.

¹ Proposed RQO 11-067 (when presented with a voting conflict, an official must abstain and not "participate" by discussing, presenting or personally attempting to influence members of their board. Advisory board members are not prohibited from meeting with and working with staff in their professional capacity prior to the matter coming before their board so long as they do not use their official position to influence staff decisions)

Pursuant to city ordinance, all CAB board members, except one, must be state-registered architects, state-registered landscape architects, state-registered professional engineers, planners, building contractors, or real estate salespersons or brokers. Under fact-specific scenarios, the Florida COE has opined that where a local ordinance requires an advisory board member to possess a registration or other professional credential, §112.313(7)(b), Florida Statutes, operates to waive an existing conflict of interest, similar to the conflict presented in proposed RQO 11-067.² That opinion is based upon the Florida Code of Ethics. The City suggests that because there is no express prohibition in the county code that mirrors the language of §112.313(7)(a), Florida Statutes, that state law controls and the exception created by §112.313(7)(b) would authorize a board member, who is appointed based upon professional licensure, to appear before and represent a client before his or her own board.

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

The Florida Code authorizes governmental entities to adopt more stringent ethics standards under §112.326, Florida Statutes.³ Section 2-443(a) of the Palm Beach County Code of Ethics prohibits any advisory board member, elected official or employee from using their official position to give themselves, their outside business, or a customer or client of their outside business a special financial benefit not shared with similarly situated members of the general public. In tandem with the misuse of office provision, §2-443(c) prohibits county and municipal officials from voting on, or participating in, any matter that would result in a special financial benefit attributable to themselves or one of seven prohibited entities outlined in §2-443 (a). These prohibitions are more stringent than state requirements as they encompass *all* conflict of interest provisions outlined in the state code of ethics.

Accordingly, advisory board members, regardless of licensure qualifications provided by City ordinance, must 1) disclose the nature of their conflict before their board discusses the issue; 2) abstain when the vote takes place *and not participate* in the matter; and 3) File a state voting conflict form (8B) submitting a copy to the clerk and the Palm Beach County COE.

The language of §2-443(c) is as follows:

County and municipal officials...shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above...Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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...

²CEO 04-1 (Section 112.313(7)b operates to negate conflicts grounded in §112.313(7)a where an ordinance recognizes that professional credentials are so vital to the expertise and operation of a public board that while a prohibited conflict of interest exists, that interest must yield to the public purpose of a portion of the board's membership possessing professional training).

³FLA. STAT. §112.326, *Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part. PBC Code §2-441, the purpose of this code is to provide additional and more stringent ethics standards as authorized by Florida Statutes, §112.326.*

In this context, “participate” means that an advisory board member may not present their own project, their employers project or as in the case presented in proposed RQO 11-067, a clients project, to their board, or take part in any presentation or discussion regarding that project before fellow board members. Advisory board members are not prohibited from meeting with and presenting materials to staff regarding a project provided such contact is in their professional capacity.⁴ However, while advisory board members may submit and discuss their project with staff prior to the matter coming before their board, they may not use their official position to influence the process. To be clear, advisory board members are not prohibited from working with City staff in their professional capacity up and until the matter goes before their board, so long as it remains in their professional as compared to their official capacity as a board member. This provision does not prohibit other owners or employees of a board member’s outside business or employer from representing a client’s interest or a business’s interest in these matters, so long as it is not done on behalf of the abstaining board member.

IN SUMMARY, state law permits local government to adopt more stringent standards of conduct than those specified in the Florida Code of Ethics provided those standards do not otherwise conflict with the state code. The Palm Beach County Code of Ethics does not ban the establishment of licensure requirements for local advisory boards, however, in certain instances it does more tightly regulate potential financial misuse of the office. Based on the facts and circumstances presented, advisory board members, regardless of any professional licensure requirements associated with their appointment, may not use their appointed office to give themselves, their outside business or a customer or client of their outside business a special financial benefit. When faced with a conflict, they must disclose, abstain, not participate and file the required conflict disclosure form 8b. The Code of Ethics does not prohibit a business associate or other individual from representing a client’s interests before the official’s board.

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/mr/gal

⁴ Please note that contacting CAB members about a matter coming before the board may result in a Sunshine Law violation.

XI – Proposed Advisory Opinions

RQO 11-054 Peter Elwell

A Town Manager asked whether municipal employees may accept discounted food from local restaurants that may be Town vendors. There is no indication that these discounts are provided as a quid pro quo in exchange for any official public action or the past, present or future performance of a legal duty.

Staff submits the following for COE approval: public employee discounts may be exempted from the gift law prohibitions applicable to vendors, provided; they are not based on the preferred treatment of the vendor by the employee or official, they apply to all other similarly situated government employees or officials, are not targeted to an individual or office, and they are not otherwise offered as a quid pro quo, or to otherwise convey a special benefit in violation of the misuse of office or voting conflicts sections of the Code of Ethics.

RQO 11-085 Lisa Tropepe

A Municipal Council member, who contracts with other municipalities to provide engineering services, asked whether it violates the Palm Beach County Code of Ethics to supervise and provide engineering services for a municipal construction project where her step-son is an employee of a construction company also working on the project. The Council member is a shareholder of an engineering firm that enters into contracts to design and oversee certain engineering projects for municipal and other local government agencies. For two smaller municipalities within Palm Beach County, the firm is retained as “Town Engineer.” For these municipalities, the company reviews applications for building permits and supervises ongoing maintenance and construction of public facilities.

Staff submits the following for COE approval: When a firm is contracted by a local governmental entity to design and oversee a specific project and where the firm has no power to determine what specific contractor is engaged by the municipality to complete that project, the engineer is a vendor of the municipality, not a contract employee. Where an engineer is designated Town Engineer to review and oversee all engineering projects within the municipality, the engineer is performing a government function as contemplated by the Code and is therefore considered a contract employee. As a contract employee, the official is prohibited from taking or influencing others to take any official action that would give their step-son’s employer a “special financial benefit” not available to other similarly situated contractors.

Finally, an elected official may not enter into contracts to provided goods or services to the government they serve unless one of several exceptions applies. Elected officials are prohibited from voting on or participating in any matter that would give a special benefit to their outside employer, outside business, step-son or his employer.

RQO 11-088 Joe Panella

A municipal advisory board member, who is employed by a vendor of the municipality he serves, asked whether he may continue to serve as an advisory board member.

Staff submits the following for COE approval: It does not violate the Code of Ethics (and no conflict waiver of the governing body is required) for an employee of a municipal vendor to serve on an advisory board, provided that the advisory board provides no regulation, oversight, management, or policy-setting recommendations regarding the municipality’s contracts or transactions with the board member’s outside employer. In order to comply with the transparency requirements of the Code of Ethics, advisory board members whose outside employer has contracts with the government they serve, must disclose this conflict at a duly noticed public meeting of the municipal council.

October 7, 2011

Peter B. Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: RQO 11-054
Gift Law

Dear Mr. Elwell,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on October 6, 2011.

YOU ASKED in your letter dated July 12, 2011, whether Town of Palm Beach (the Town) employees, may accept discounted food from local establishments that may be Town vendors, where these benefits are provided due to the employees employment status with the Town, but where it is not given as a *quid pro quo* in exchange for any promised governmental action, and is a general discount available to all employees without exception.

IN SUM, Town employees are not prohibited from accepting discounted food at local restaurants, provided that the discount is not based on preferred official treatment of the vendor by the employee, the discount applies to all similarly situated government employees or officials, and it is not otherwise offered as a *quid pro quo* or to convey a special financial benefit in violation of the misuse of office sections of the code.

THE FACTS as we understand them are as follows:

You are the Town Manager of the Town of Palm Beach. Town employees are offered discounted food by local restaurants that may or may not be vendors of the Town. There is no indication that these discounts are provided as a *quid pro quo* in exchange for any official public action or the past, present or future performance of a legal duty.

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

Section 2-444(g) defines a gift as the transfer of anything of economic value. Discounted services are a thing of value and §2-244(a) prohibits a public employee from soliciting or accepting, directly or indirectly, "*a gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that ...is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the ... county.*" Several of these restaurants are vendors of the Town and would be subject to this prohibition should the discounts exceed \$100 during the year. However, the code excludes certain transfers of economic value from the definition of a gift. Section 2-444(g)(1)f. states as follows:

Exceptions. The provisions of subsection (g) shall not apply to:

- f. Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public;

Under the facts and circumstances of these transactions, all government employees receive the same discount regardless of whether the restaurant supplies goods or services to their public employer. Therefore all similarly situated persons within the general public, in this instance, Town employees, are treated alike. Previously, the COE has determined that non-vendors may offer discounted rates to public employees so long as there is not a quid pro quo or an exchange for the past, present or future performance or non performance of a legal duty or official action.¹ Regarding vendors, the COE determined that so long as discounts were not directed to a select individual or group of individuals singled out to receive a special discount not available to other similarly situated government employees, the general public discount exception may apply.² For example, should a vendor of the Town choose to offer a discount targeted to the employees who award or oversee their contract, such a discount would be prohibited under the code of ethics.

In addition, public employees and officials must keep in mind that §2-443(a) of the code prohibits any use of official position or office that will result in a special financial benefit, not shared with similarly situated members of the general public, for the public employee or official, as well as relatives, outside economic interests and non-profit organizations in which the public employee is in a leadership position. While accepting a discount under the facts submitted here is not prohibited under the provisions of the gift law, any such "use" of official position or office in obtaining a *special financial benefit* as defined in subsections (a), (b) and (c), would violate the misuse and conflict sections of the Code of Ethics.

IN SUMMARY, based on the facts you have submitted, public employee discounts are exempted from the gift law prohibitions applicable to vendors, provided; they are not based on the preferred treatment of the vendor by the *employee or official*, they apply to all other similarly situated government employees or officials, and they are not otherwise offered as a quid pro quo, or to convey a special financial benefit in violation of the misuse of office or voting conflicts sections of the Code of Ethics.

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/mr/gal

¹ RQO 11-002, RQO 11-007

² RQO 11-064 (Cell phone carrier discounts for public employees)

October 7, 2011

Ms. Lisa Tropepe
Engenuity Group, Inc.
1201 Belvedere Road
West Palm Beach, FL 33405

Re: RQO 11-085
Misuse of Public Office or Employment/Voting Conflicts

Dear Ms. Tropepe,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on October 6, 2011.

YOU ASKED in your email dated September 12, 2011, forwarded to the COE by the Office of the Inspector General, whether it violates the Palm Beach County Code of Ethics for you, as a shareholder of the engineering and consulting firm, Engenuity Group, Inc. (EG), to work as both designer and inspector on a project, where a construction company is contracted by a municipality or other local government entity to work on the same project, if your step-son is a truck driver employed by that construction company. COE staff obtained additional information regarding this issue from several follow-up email exchanges.

IN SUM, under the facts you have submitted, where you or your outside business, EG, are contracted by a local municipality or other governmental entity to design and oversee a specific engineering project, and where you or EG have no power to determine what specific contractor is engaged by the client municipality to complete the work on that project, and where your contract with the municipality does not indicate that you are engaged as *contract personnel* or *contract administrator performing a government function*, you are acting as a "vendor" for the municipality, not as a contract employee. Therefore, the Code's prohibition against giving any "special financial benefit" to certain persons or entities does not apply.

However, where you are contracted by a municipality as a *Town Engineer* to review and oversee all engineering projects within a municipality, you are *performing a government function* as contemplated by the Code, and assume the role of contract employee under its provisions. You therefore are prohibited from taking or influencing others to take any official action that would give your step-son's employer a "special financial benefit" not available to other similarly situated contractors.

Lastly, as a Council Member of the Town of Palm Beach Shores (the Town), you and your outside business are prohibited from entering into any contract for goods and services with the Town unless one of several exceptions applies. You are further prohibited from voting on or participating in any matter that would give a special financial benefit to your outside employer, your step-son or his employer.

THE FACTS as we understand them are as follows:

You are a shareholder in the engineering and consulting firm of EG, located in West Palm Beach. Your firm enters into contracts to design and oversee certain engineering projects for municipal and other local government

agencies. For most of these governmental entities, EG is a “vendor” of the government organization, working within a contract for a particular project.

For two smaller municipalities within Palm Beach County, EG is retained as “Town Engineer.” For these municipalities your company reviews applications for building permits, and supervises any ongoing maintenance or construction of public facilities. You are also the vice-mayor, and an elected member of the Town Council of a third municipality, the Town.

You advised that your step-son has been offered employment by a construction company as a truck driver. Prior to him accepting this employment, you asked how this employment would affect your engineering company’s ability to work on local government contracts where your step-son’s company was hired by the municipal client to participate in the project, and where your company has oversight responsibilities on the project as part of EG’s contractual responsibilities to the client.

Lastly, you stated that on all of these projects the municipal client determines which construction company will be contracted for a project. This is sometimes done through a closed bid process, and sometimes based on a contractor’s particular skills. While the municipal client may on occasion ask EG for advice as to a contractor’s knowledge and ability to perform the type of work to be conducted, neither you nor your firm has any other input as to the selection of contractors by the municipalities.

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

Sections 2-443(a)(b) and (c) of the Code of Ethics prohibit a public official from using his or her official position to specially financially benefit certain entities or persons in a manner not shared by similarly situated members of the general public. Included in this prohibition are certain family relatives of the official, including “step-son.” Subsection (c) also prohibits officials from voting or participating in matters that would financially benefit these persons or entities in a manner not shared with other similarly situated entities or individuals. In addition, §2-443(b) prohibits an official or employee from using their official position to specially financially benefit any person or entity if done with corrupt intent.

Whether §2-443(a) or (b) apply to you in a particular situation depends upon the relationship you and/or EG has with a government client. Where you or EG serve only as a vendor on a project, even though as the designer you may also oversee the project’s completion, you are not performing a government function within the meaning of the Code of Ethics, but rather act as a vendor/contractor, unless the terms of your contract specifically indicate otherwise.

However, where you or EG are contracted as a “Town Engineer,” and have general oversight responsibilities for all projects within a particular municipality, you do fall under these Code provisions as a contract employee as defined in §2-442.

The term “employee” includes...contract personnel and contract administrators performing a government function...

As a contract employee you are prohibited from taking any action that would give your step-son or his employer any “special financial benefit” not available to other contractors, or potential contractors, for that municipality. Finally, as a member of the Palm Beach Shores Town Council, as an elected official, your company may not enter into any contract for goods and services with the Town, unless the contract comes under a specific exception to this prohibition, nor may you vote or participate in any discussion concerning a matter that may result in a special financial benefit to your step-son or his employer.

Ordinarily, as a contract employee, you and your outside business would be prohibited from contracting with your municipal employer as well. However, §2-443(d), contractual relationships, specifically states that this section

shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality.

IN SUMMARY, as an elected official or a contract employee performing a government function you are prohibited from using your official position to give a financial benefit, not available to other similarly situated contractors, to your outside employer or the outside employer of your step-son. In regard to your elected status, you may not vote or participate in such a matter. Where you are serving as a "Town Engineer" for a municipality, the official designation coupled with the expanded role encompassing all municipal projects takes you out of the realm of outside contractor and into a scenario that places you and your firm into a quasi-public role. Under these circumstances you are subject to the financial misuse and other sections of the code as a contract employee.

However, under the specific facts you have submitted, if you or EG are contracted on an individual project to oversee that project, without any further authority, and the terms and conditions of your relationship to the municipality do not indicate a quasi-public official role, such a relationship would not make you a contract employee under the code of ethics.

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/meb/gal

PROPOSED

October 7, 2011

Mr. Joseph Panella
Downtown Boca Raton Advisory Committee
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: RQO 11-088
Voting Conflicts

Dear Mr. Panella,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting on October 6, 2011.

YOU ASKED in your email dated September 19, 2011, whether it violates the Palm Beach County Code of Ethics for you, as an employee of AT&T, a vendor of communication services to the City of Boca Raton, to serve on either of two (2) Boca Raton Advisory Boards, The Downtown Boca Raton Advisory Committee (DAC), and The Zoning Board of Adjustment (ZBA). Additional information was obtained by COE staff from you during several follow-up email exchanges, and from the City of Boca Raton governmental website¹.

IN SUM, it does not violate the Code of Ethics for you to serve on either the Downtown Boca Raton Advisory Committee or the Zoning Board of Adjustment, where your outside employer, AT&T, is a vendor of communication services to the City of Boca Raton, providing that neither of the advisory boards of which you are a member provide regulation, oversight, management, or policy-setting recommendations regarding Boca Raton's contracts or transactions with AT&T, and providing that this conflict is disclosed at a duly noticed public meeting of the City Council.

THE FACTS as we understand them are as follows:

You are a resident of the City of Boca Raton (the City) and an employee of AT&T. AT&T is a vendor who provides communications services to the City. You advise that your employment activities within AT&T are not related to any services provided by AT&T to the City.

You are also a volunteer member of two (2) separate advisory boards for the City, the Downtown Boca Raton Advisory Board (DAC), and the Zoning Adjustment Board (ZAB). You were appointed to serve on these advisory boards by the City Council. The DAC is purely advisory, and provides input and recommendations to the Community Redevelopment Agency (CRA) and the City Council regarding the

¹ www.ci.boca-raton.fl.us/city/brdcomm.shtm

present and future redevelopment of downtown Boca Raton. The ZAB is not purely advisory, and hears quasi-judicial matters involving the interpretation of any provision of the Code upon appeal from a decision of the Zoning Administrator. Neither of these boards provides any regulation, oversight, management, or policy-setting recommendations regarding services provided to the City by AT&T.

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

The relevant portions of Section 2-442, *Definitions*, of the PBC Code of Ethics define "Advisory Board" as any advisory or quasi-judicial board created by the local municipal governing bodies, and defines "Official" as a member appointed by the local municipal governing board to serve on any advisory, quasi-judicial or any other board. Section 2-442 also defines an "Outside employer or business" as any entity other than a governmental entity, of which the official 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. Finally, this section defines a "Vendor" as *any person or entity... who currently sells goods or services....to a municipality, and includes any owner, director, manager or employee.*

Under this section of the Code and based on the facts you presented, AT&T is your outside employer and a vendor of the City. Both DAC and the ZAB are advisory boards. And, because you were appointed to both of these volunteer positions by the City Council, the governing board for this municipality, you are an "Official" within the meaning of the Code of Ethics.

Section 2-442(a)(1-7) and (b) of the Code of Ethics prohibits the use of your official position as an advisory board member from financially benefiting certain persons and entities, including your outside employer, in a manner not shared with similarly situated vendors seeking to transact business with the City or from corruptly benefiting any person or entity.

Section 2-442(c), *Disclosure of voting conflicts*, requires that should any matter that would specially financially benefit any person or entity described in Section 2-442(a)(1-7), including your outside employer AT&T, come before either of your advisory boards, you must disclose this conflict at the public meeting where the issue is to be addressed, abstain from voting and not participate in the matter. You must further file a State of Florida Commission on Ethics Conflict Form 8B with the City clerk and provide a copy to the PBC Commission on Ethics.

Lastly, section 2-443(d) prohibits an official from entering into *any contract or other transaction for goods or services with their respective...municipality.* This prohibition extends to all contracts or transactions between the municipality, and the official, directly or indirectly, *or the official's outside employer or business.* However, the prohibition does *not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.*

Based on the facts and circumstances you have provided, contracts or transactions between the City and AT&T are not subject in any way to either the DAC or ZAB boards. Therefore, notwithstanding the fact that your employer transacts business with the City, you are permitted under the Code of Ethics to disclose the relationship and continue as a board member.

IN SUMMARY, so long as the relationship is disclosed at a City Council meeting, and the advisory boards you serve on provide no regulation, oversight, management, or policy-setting recommendations regarding services provided to Boca Raton by your outside employer, and providing that you disclose, abstain and not participate in any matter that may come before either advisory board concerning your outside employer², you are not prohibited from serving on the DAC and ZAB volunteer advisory boards for the City of Boca Raton.

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/meb/gal

² For example, a zoning issue within the City involving AT&T.

XII – Rules of Procedure Amendments

Staff analysis:

On September 1, 2011 the Commission on Ethics revised several Rules of Procedure to comport with the changes contained in the June 1, 2011 revised Code of Ethics and Commission on Ethics ordinances. Section H. contains penalty phase rules. The penalty rules, specifically Rule 8.2, include reference to the standard of proof required to find that a violation has been committed. The revised Code of Ethics requires a finding, “by clear and convincing evidence, based upon competent substantial evidence in the record...” Upon review of staff’s proposed changes to Rule 8.2, the Commission voiced concern that the language proposed appeared to suggest two separate standards of proof. Staff submits the following revision to Rule 8.2 for commission review and adoption.

Staff Recommendation:

Staff recommends that the COE amend its Rules of Procedure as follows:

8.2 Order Upon Finding of Violation

- a) Upon a public hearing, if the Commission on Ethics finds, by clear and convincing evidence, ~~based upon competent substantial evidence in the record~~, that a violation has been committed, the Commission shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The final order shall include a determination as to whether the violation was intentional or unintentional. Findings by the Commission shall be supported by competent, substantial evidence.

- b) If, by Respondent’s default, no public hearing is held in the matter, the Commission may make such findings as are consistent with the investigative information and issue appropriate orders.