



Palm Beach County Commission on Ethics

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September 9, 2011

Thomas Sheehan, Esquire
Children's Services Council
2300 High Ridge Road
Boynton Beach, FL 33426

Re: RQO 11-068
Fundraising/ FS 125.901 Independent Special District

Dear Mr. Sheehan,

The Commission on Ethics considered your request for an advisory opinion and rendered its opinion at a public meeting held on September 1, 2011.

YOU ASKED three questions in your letter dated August 10, 2011. Two questions were submitted on behalf of County Commissioner Steven Abrams, a Council Member of the Children's Services Council (CSC) and one on behalf of CSC, in reference to potentially contracting for the services of the Commission on Ethics (COE) and voluntarily coming within its jurisdiction. You previously had met with COE staff regarding jurisdiction and have responded to additional follow-up questions.

First, you asked whether Commissioner Abrams would be considered as "soliciting" any entities that CSC, through its fundraising arm, Resource Development Initiative (RDI), solicits as part of its statutory mandate to raise funds for agencies operated for the benefit of children. Second, if considered as soliciting for these purposes, what steps must Commissioner Abrams take to be in compliance with the Code of Ethics? Lastly, if the CSC were to voluntarily submit to the jurisdiction of the COE by contract, would this affect the duties and requirements of Commissioner Abrams, other CSC Council members or staff?

IN SUM, based on the facts you have submitted, when RDI is soliciting a contribution for a non-profit organization, neither the Council Member's names nor titles are used or provided to prospective donors. Commissioner Abrams is not involved, directly or indirectly, with solicitations made by CSC or RDI staff as permitted under state law. Therefore, donations would not be considered gifts solicited or accepted by the official "or any other person or business entity on his or her behalf", directly or indirectly.

So long as the manner of solicitation and acceptance of donations remains as you have described, the CSC coming within the jurisdiction of the COE would not change this relationship. Additionally, since solicitation by RDI on behalf of non-profit organizations does not involve vendors or lobbyists of CSC, the prohibitions and regulations involving soliciting or accepting prohibited gifts from these entities would not be an issue. Lastly, because the CSC enabling statute mandates CSC *allocate and provide funds for other agencies in the county which are operated for the benefit of children*, grants and other donations solicited through the CSC by CSC staff for a public purpose would not constitute gifts as defined by the Code of Ethics.

THE FACTS as we understand them are as follows;

You are the general counsel for Children's Services Council (CSC), a local government entity established under §125.901, Florida Statutes, as an independent special district. Approved by a referendum of the voters of Palm Beach County, CSC has a ten-person council, five of whom are gubernatorial appointees, and five of whom sit based upon positions held in other entities. Of the five positions held by other entities, one position contains an appointee who is otherwise under the jurisdiction of the Palm Beach County Code of Ethics, County Commissioner Steven Abrams.

The powers and duties of each council on children's services within the State of Florida is delineated in §125.901(2). These statutorily mandated core functions include the following:

To allocate and provide funds for other agencies in the county which are operated for the benefit of children, provided they are not under the exclusive jurisdiction of the public school system.¹

CSC has interpreted agencies as including 501(c)3 non-profit organizations. In order to achieve its program funding goals, CSC created the Resource Development Initiative (RDI), a collaborative effort between CSC and the United Way of Palm Beach County. RDI participates in solicitation of contributions on behalf of or in collaboration with other non-profit charitable organizations. These solicitations are accomplished in several ways. In some instances RDI will assist a non-profit organization in filing a grant application with a foundation. This is done because foundations will more readily contribute to a 501(c)3 non-profit than to a governmental entity. Money from these grants would go directly to the non-profit entity. In other cases, CSC funds are used to "leverage" additional contributions to non-profit organizations and in those instances, the funds from CSC as well as the grantor entity would go directly to the non-profit organization.

In addition, CSC created its own 501(c)3 non-profit corporation, the Prevention Partnership for Children, Inc. (PPC). Both PPC and United Way are recipients of contributions solicited by RDI. United Way is a partner in this effort because of its connection with the grant funders of the RDI mission. CSC provides funding to United Way that is then distributed to other non-profit organizations, (e.g., special needs agencies). Lastly, RDI handles the creation of "support letters" endorsing non-profit attempts to directly solicit grants or other donations, typically from foundations or government entities. RDI will review the proposed request, determine if the CSC mission warrants support, and if so, prepares a letter which is signed by the CEO of the CSC. As in many of the RDI efforts, funding goes directly to the non-profit organization. Solicitations made by RDI on behalf of itself or other non-profit organizations do not involve vendors or lobbyists who sell, lease to, or lobby CSC

The fundraising activities of the RDI do not involve CSC Council Members, other than to the extent that foundations or other donors usually request a list of Council Members when funds are being solicited directly by RDI. However, when RDI solicits a contribution for a non-profit organization, neither the Council Members names nor titles are provided. Council Members are not involved in soliciting, either directly or indirectly for RDI. With the exception of the annual RDI report and occasional updates regarding specific grant applications or funding collaborations, the Council Members are not made aware of RDI activities, including specific solicitations. Lastly, solicitations by RDI employees on behalf of non-profit organizations are done solely in their official capacity as CSC employees.

¹ §125.901(2)(a)3.

THE LEGAL BASIS for allowing direct and partnered solicitation of grants and other funding by CSC, RDI and PPC is based upon the gift law and its exceptions. The prohibition against soliciting or accepting more than \$100 annually in the aggregate states that *"no county commissioner...or any other person or business entity on his or her behalf, shall knowingly accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from...a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county..."* Commissioner Abrams would be accountable under this subsection, however, under the facts and circumstances submitted, neither his name nor his title are used by CSC, RDI or PPC for any solicitation or grant application other than solicitations directly by, and for the CSC, a government entity.

Notwithstanding, the status of the CSC, its subdivisions and partner non-profit organizations, are specifically addressed within the state statute with regard to the CSC public function and mission. Section 2-444(g) defines a gift as *"the transfer of anything of value."* The following code provision would seem, therefore, to apply:

§2-444(g)(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;*

Section 2-258 of the countywide Commission on Ethics ordinance contemplates taxing districts, and other public officials and entities voluntarily coming within the jurisdiction of the Code of Ethics. Therefore, for purposes of the Code of Ethics, sections applicable to county or municipal officials likewise apply to their counterparts within special taxing districts.

First, CSC fundraising is done through RDI, a part of CSC and is performed by RDI staff. The enabling state statute specifically mandates fundraising activities on behalf of other agencies for the benefit of children. There is no meaningful difference, therefore, in a solicitation undertaken by municipal government employees in the performance of their official duties for use solely by the municipality for a public purpose and the CSC grant and funding scenario undertaken by RDI and PPC.² CSC and its subdivisions essentially act as a pass through to fund other non-profit partners in accord with its statutory mandate.

While the gift law prohibitions may not apply to fundraising by and through the CSC, any Council Member otherwise within the jurisdiction of the Code of Ethics must adhere to §2-443(a) of the code. Commissioner Abrams may not use his official position as a county commissioner to obtain a special financial benefit, not available to similarly situated members of the general public for himself, his relatives, business interests or non-profit organizations in which he is an officer or director. Section 2-443(b) prohibits him from corruptly using his office to obtain any benefit for those persons and entities mentioned above.

IN SUM, Commissioner Abrams is not involved in the solicitation of funding for the RDI, PPC or any other non-profit beneficiary. His name and title are not used with the exception of foundation or donor requests for a list of Council Members when funding is solicited directly for the CSC, a government entity. Therefore, under these facts

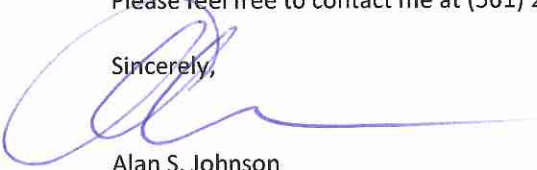
² RQO 10-040 (Staff of Drowning Prevention Coalition of Palm Beach County, a division of County Parks and Recreation, soliciting funds in their official capacity to build an awning over a Palm Beach County pool for the benefit of children involved in Special Olympics)

and circumstances, donations are not being solicited by Commissioner Abrams or any other person or business entity on his behalf and the prohibitions of §2-444(a) would not apply. In any event, gifts solicited or accepted by an employee or official of a government entity, on behalf of that entity, in performance of their official duties for use solely by the entity for a public purpose would be excluded from the definition of a gift. Notwithstanding the fact that CSC and its fundraising arms RDI and PPC have active partnerships with other non-profit corporations, given the statutory mandate and mission of the CSC, the Commission on Ethics, views these relationships to be indistinguishable from county or municipal governments soliciting funds which ultimately benefit other non-profit entities. Notwithstanding the fact that the code does not prohibit these fundraising activities, Commissioner Abrams is subject to the misuse of office sections and may not use his official position to specially financially benefit himself, a relative, business interest or a non-profit organization where he is an officer or director.

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