



Palm Beach County Commission on Ethics

Commissioners

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August 3, 2012

Beverly Brown, MMC
Town Clerk, Town of Highland Beach
Highland Beach, FL 33478

Re: RQO 12-051
Misuse of Office

Dear Ms. Brown

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 August 2, 2012.

YOU ASKED in your submission dated July 2, 2012 whether your office may provide an elected official with an email database of local condominium presidents and home owner association directors, and whether the use of the database by the elected official to advocate a position on an upcoming issue before the Town Council violates the Palm Beach County Code of Ethics. The database is available to the public through a public records request.

IN SUM, an official is prohibited from using his or her official position to gain a *special* financial benefit. Here, there is no indication that the elected official received a special financial benefit as defined by the Palm Beach County Code of Ethics (the Code). Additionally, the Code does not limit or regulate political activity that does not involve a corrupt misuse of official position. Regulation of political activity or public records disclosure is controlled by state and federal law.

THE FACTS as we understand them are as follows:

You are the Town Clerk to the Town of Highland Beach (the Town). Recently, an elected official obtained a list of local home owners association board members and condominium association presidents maintained by Town staff. He proceeded to contact these persons regarding an issue coming before the Town Council, specifically, setting of the Town's maximum millage rate. Essentially, the phone calls were made from the Town hall phone system to enlist citizen support in opposition to any tax increases by the Town Council. Your office has received numerous telephone calls from members of the community requesting that they not be contacted by the elected official in the future. You have also received several complaints suggesting that the official is using public resources to further his future political aspirations.

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:

Section 2-443(a) prohibits a public official from using his or her official position to financially benefit themselves in a manner not shared with similarly situated members of the general public. Based upon the facts and circumstances you submitted, the list is a public record, therefore, the official has not used his position to obtain a benefit not available to the general public. Similarly, because the official was advocating for citizen response to a public matter that would affect all residents of the Town in the same manner, there is no *special* financial benefit uniquely attributable to the elected official.

Additionally, §2-443(b) prohibits a public official from using his or her official position *to corruptly secure or attempt to secure a special privilege, benefit or exemption for himself, herself, or others*. Corruptly, means done with a wrongful intent and in a manner inconsistent with the proper performance of his or her official duties. Although §2-442 specifically excludes campaign contributions from the definition of financial benefit, such a benefit is not immune from scrutiny if obtained corruptly. However, based upon the facts and circumstances submitted, the calls to constituents did not involve solicitation of campaign contributions.

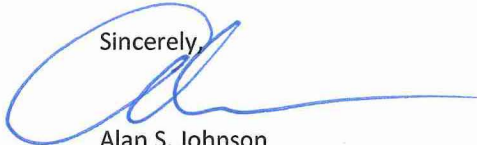
While the elected official may have used his position to obtain the homeowner/condo list without following the proper Town public records request procedure, such action does not rise to the level of corrupt misuse. The COE will not opine as to speculative facts and circumstances that may rise to a violation of the corrupt misuse section of the Code.

IN SUMMARY, based upon the facts and circumstances presented, the use of a public record by an elected official to solicit public response on a general issue before the Town council affecting all residents of a municipality, that does not involve a special financial benefit, is not prohibited under the financial misuse section of the Palm Beach County Code of Ethics. Nor does such action rise to the level of a corrupt misuse of office.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law, including the release of public records. 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/mcr/gal