

Palm Beach County Commission on Ethics

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August 3, 2012

Janus Rustin, Assistant City Attorney
City of Delray Beach
200 N.W. 1st Avenue
Delray Beach, FL 33444

Re: RQO 12-055
Gifts/Employee Appreciation

Dear Ms. Rustin,

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, as Assistant City Attorney for the City of Delray Beach (the City), in your email submission dated July 18, 2012, whether a local cruise company may hold a City Parks and Recreation appreciation cruise for department employees and their families.

IN SUM, offering an employee appreciation cruise and barbecue to all employees of a City's Parks and Recreation Department as a general gesture of appreciation for public employees and their families from a non-vendor of a municipality is not prohibited by the Palm Beach County Code of Ethics (the Code) provided that the event does not reward individual employees for the specific performance of an official act or public duty and there is no *quid pro quo* or other special consideration given to the donor in exchange for the donated gifts. If the value of the event for an individual employee and his or her family members exceeds \$100, the gift must be reported as required by the Code.

THE FACTS as we understand them are as follows:

A local tour company, Delray Yacht Cruises (Tour Company), would like to host an employee appreciation cruise and barbecue for employees of the City's Parks and Recreation Department and their families. Delray Yacht Cruises leases dock space from the City of Delray Beach (the City). City park employees do not maintain the dock, but they do maintain an adjacent park, Veteran's Park, which is adjacent to the dock. Customers of the Tour Company, as well as other members of the general public, are allowed to park in the Veteran's Park parking lot free of charge. The Tour Company is not a municipal vendor as defined under the Code and does not lobby the City.

The Tour Company's owner described his reasons for hosting the event in an email to the City as follows:

"I thought it would (be) a great morale building event going into next busy season. As I said, I see the work these people do every day and I think they deserve to be recognized as a group."

The event will consist of an hour long cruise, a cookout in Veteran's Park, with music from a steel drum band, and contests with prizes. The value of the event will be less than \$20 per person.

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 2-444(a)(1) prohibits an elected official or government employee from soliciting or accepting any gifts with a value of greater than \$100, in the aggregate for the calendar year, from a person or 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 their government employer. Section 2-443(1)(b) prohibits the vendor, lobbyist or principal from giving such a gift to a public employee as well.

Section 2-444(c) prohibits the solicitation of any gift from a vendor, lobbyist, principal or employer of a lobbyist if the gift is for the personal benefit of the official or employee, fellow official or employee, or the official or employee's relatives or household members. The term vendor is defined as any person or entity who has a pending bid proposal, has a pending offer or currently sells goods or services, or real or personal property, to the county or municipality, as applicable.¹

Under the facts you have submitted, the Tour Company is neither a vendor nor an employer or principal of a lobbyist that lobbies the City. While the Tour Company leases space from the City, it does not provide goods or services. It is merely a consumer of City offered services and facilities.² Therefore, the above sections do not apply.

Section 2-444(e) states as follows:

- (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.

A gift of any value may not be accepted as a *quid pro quo* for any official action, duty performed or duty violated.³ Nor may a gift be accepted as a thank you gift or otherwise in appreciation for the performance of an official act by a public employee.⁴ Notwithstanding, where a gift is general in nature and not directed at specific acts of individual employees, depending upon the facts and circumstances, such a gift may not be prohibited. For example, lunch and complimentary use of golf and tennis facilities as an expression of appreciation for the work of municipal public safety employees was found not to violate section 2-444(e) where the donor country club was not a municipal vendor, lobbyist or principal of a lobbyist.⁵ Similarly, awards given by a private entity to municipal employees generally for outstanding performance (such as employee of the year, officer of the month, etc.), were not prohibited

¹ Art. XIII, §2-442 Definitions. *Vendor*.

² RQO 11-022 (Airline leasing space at airport is not a vendor)

³ RQO 11-103

⁴ RQO 10-031, RQO 11-008

⁵ RQO 11-007

where the donor was not engaged in vending or lobbying with the town.⁶ The COE has likewise determined that public employees could solicit funds from non-vendors, lobbyists or their principals, in order to recognize 911 operators at a luncheon in recognition of National Telecommunicator Week.⁷

The key factors involved in these opinions include; the gift was general in nature and given to recognize a large class of public employees, the gift was not in response to a specific act by one or more employees meant as a tip, thank-you or compensation and, the gift was not given by a vendor, lobbyist, principal or employer of a lobbyist who lobbies the employee's public employer.

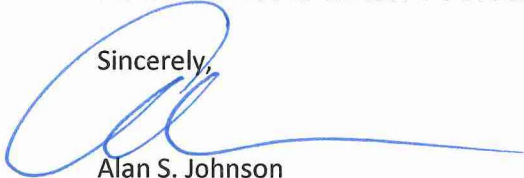
Notwithstanding, any gift with a value in excess of \$100 must be reported as required under section 2-444(f)(2) of the Code. You have indicated that the value of an individual cruise and barbeque is under \$20. The gift is available to Parks and Recreation Department employees and their families. Assuming a \$20 value, if an employee receives more than four tickets, the gift will need to be reported.⁸ Likewise, if an employee or family member wins a raffle prize, if the value exceeds \$100 it must be reported by the employee.

IN SUMMARY, under the facts and circumstances you submitted, an appreciation cruise and barbeque for all employees of the City Parks and Recreation Department and their families is not prohibited provided that the donor is not a vendor, lobbyist, principal or employer of a lobbyist, and the event is general in nature and not hosted because of the performance or non-performance of an official act or legal duty or as a *quid pro quo* given in exchange for the gift. If a raffle prize or the value of the admission, including each employee and their family members taken together, exceeds \$100, the gift must be reported on an annual gift reporting form as required by the Code.

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. 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/gal

⁶ RQO 11-053

⁷ RQO 12-020

⁸ RQO 12-037 (gifts given with the intent to benefit a public employee are attributed to the employee)