



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

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Commissioners

Peter L. Cruise

Carol E. A. DeGraffenreidt

Michael S. Kridel

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Rodney G. Romano

Executive Director

Mark E. Bannon

Intake and Compliance Manager

Gina A. Levesque

General Counsel

Christie E. Kelley

Investigator

Abigail Irizarry

Investigator

Mark A. Higgs

Agenda

October 1, 2020 – 1:30 p.m.

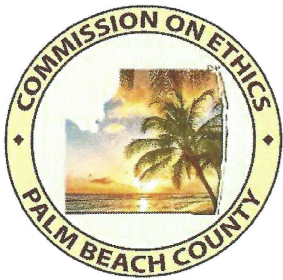
Governmental Center,

301 North Olive Avenue, 6th Floor

Commissioners Chambers

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- I. Call to Order
 - II. Roll Call
 - III. Introductory Remarks
 - IV. Processed Advisory Opinion RQO 20-010 (Consent Agenda)
 - V. Discussion and nomination of candidates to be forwarded to the Board of County Commission for them to appoint two (2) candidates to the Review Committee for the Ethics Ordinances.
 - VI. Executive Director Comments
 - VII. Commission Comments
 - VIII. Public Comments
 - IX. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.



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Michael S. Kridel, Vice Chair
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Executive Director

Mark E. Bannon

September 18, 2020

Mr. Doug McGlynn
Deputy Chief of Operations
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411

Re: RQO 20-010
Gift law

Dear Chief McGlynn,

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

QUESTIONS:

- 1) Does the Palm Beach County Code of Ethics (Code) prohibit you as a county employee from accepting gifts from JFK Medical Center where you serve on its Board of Trustees (BOT)?
- 2) Does the Code prohibit your county employment from being listed on your biography for the BOT webpage?

FACTS:

You are the Deputy Chief of Operations for Palm Beach County Fire Rescue. You are a member of the BOT for JFK Medical Center. As a member of the BOT, your biography, which includes your employment with Palm Beach County Fire Rescue, is listed on JFK Medical Center's website. In reviewing the Code and annual training video material, you wanted to ensure that your position on the BOT does not present any conflict.

Your position on the BOT is voluntary, and there is no compensation for your participation. Prior to the current pandemic, food and light refreshments were served at the BOT meetings. In addition, around the holidays, a BOT meeting is usually held at a local restaurant, and BOT members are allowed to bring a guest.

Occasionally, JFK Medical Center will also invite the BOT members to participate in corporate activities, such as its Annual Pumpkin Decorating Contest, where BOT members serve as judges. BOT members do not receive any compensation or any gifts in return for their volunteered service at such events. BOT members are also invited to participate in corporate charities such as the Diabetes Run or other events as part of the JFK Medical Center team. To date, you have not participated in any of the corporate charities, but you did serve as a judge at last year's pumpkin decorating contest.

JFK Medical Center has also extended an open invitation to members of the BOT to attend the Business Development Board of Palm Beach County Gala. Members of the BOT, and a guest, are invited to sit at one of the tables that JFK Medical Center purchases. This gala has a dollar value that would exceed \$100.

It is your understanding that JFK Medical Center has previously been a vendor of the county as well as a principal or employer of a lobbyist who lobbied the county. You recently asked the Finance Director for PBCFR if JFK Medical Center was a vendor of the County, and he sent you an email stating that they are not currently a vendor of the county. In addition, JFK Medical Center is not currently listed as a lobbyist or employer or principal of a lobbyist who lobbies Palm Beach County.

ANSWER:

The Code prohibits county employees from accepting, directly or indirectly, any gift valued at over \$100 in the aggregate per calendar from any person or business entity that the employee knows or should know with the exercise of reasonable care is a vendor, lobbyist, or principal or employer of a lobbyist who lobbies, sells or lease to the county.¹ The Code defines gifts as "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."² Here, the food and refreshments at the BOT meetings would not be considered gifts because your attendance and participation in the BOT meetings would be the adequate and lawful consideration. However, the food and beverages at the holiday luncheon and the entrance fees and tickets to charitable events would be considered gifts from JFK Medical Center. Based on the facts provided, as long as JFK Medical Center is not a vendor, lobbyist, or principal or employer of a lobbyist who lobbies the county, you are not prohibited from accepting any gifts exceeding \$100 in the aggregate per calendar year from JFK Medical Center.

Although you would not be prohibited from accepting these gifts, if the value of the gifts from JFK Medical Center exceeds \$100 in the aggregate per calendar year, it must be disclosed on a gift form. While state law controls the gift reporting requirements for state reporting individuals, under the Code, any county official or employee who is a state reporting individual and who files a State of Florida Quarterly Gift Disclosure Form (Form 9) must also file a copy of the Form 9 with the COE.³ County employees who are not state reporting individuals must report gifts with a value over \$100 on their annual PBC Gift Form, which must be reported to the COE by November 1 for the previous reporting year.⁴ In determining the value of a gift, the Code defers to Florida Codes and statutes.⁵ For the value of food and beverages, Florida law provides that the value of a gift provided to several individuals may be calculated on a pro rata basis among all of the invited individuals.⁶ In addition, with respect to the tickets to the gala and the entrance fees to participate in a charitable event, the value is face value of the ticket or fee minus the portion of the cost that represents a contribution to that charity.⁷ Therefore, if the value of the gifts you receive from JFK Medical Center exceeds \$100 in the aggregate per calendar year, then the gifts must be reported on a gift form.

Because JFK Medical Center has previously been a vendor of the county and may have also been a principal or employer of a lobbyist who lobbied the county, the COE believes the best practice before accepting any gifts from JFK Medical Center would be to inquire whether they are currently a county vendor or a principal or employer of a lobbyist who lobbies the county. As a reminder, if JFK Medical Center's status as a vendor or principal or employer of a lobbyist changes, then the \$100 limit on gifts accepted in the aggregate per calendar year would apply.

Finally, the Code does not prohibit you from outlining your professional experience by including your county employment and title on your biography for the BOT webpage. This type of biography is a general listing of a person's relevant employment experience and education information. The mere listing of this information on the website would not be a violation of the Code.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-444(a)(1), §2-444(f), and §2-444(g) of the Code:

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,

¹ §2-444(a)(1)

² §2-444(g)

³ §2-444(f)(1)

⁴ §2-444(f)(2)b.

⁵ §2-444(g); §112.3148, Florida Statutes; §34-13.310, Florida Administrative Code; RQO 11-022

⁶ §112.3148(7)(j), Florida Statutes

⁷ §112.3148(7)(k), Florida Statutes

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.

- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics.
- (2) *All other officials and employees who are not reporting individuals under state law.*
- b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year.
- (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. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. 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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal