



Florida House of Representatives

Marco Rubio, Speaker
Office of the General Counsel

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FORMAL OPINION 08-04

To: The Honorable Baxter Troutman
Representative, District 66

Prepared by: Jeremiah M. Hawkes, General Counsel

Date: May 19, 2008

Re: Hunting Trips

In a letter dated May 2, 2008, you inquired whether you can invite public officials governed by sections 112.3148 and 11.045(4), Florida Statutes, to the Bluehead Ranch, which is owned by a corporation you are a stockholder in. You have also inquired whether the gift would be considered a gift by the corporation or by you personally.

Under the facts you have presented it would be okay for you to invite such individuals and the trip would be considered a gift from you to them.

The facts of the situation are as follows. Atlantic Blue Group, Inc. ("ABG") is a closely held Florida for-profit corporation, registered with the Florida Secretary of State. ABG is privately held and wholly owned by the members of three different yet related families. Your immediate family (mother, sister and yourself) hold approximately 42% of the ABG stock. The corporation has 10 members on the Board of Directors. Of the Directors five members are related family members and five are independent persons. You are not a current member of the Board of Directors. You are, however, the largest shareholder of ABG, by virtue of your position and family status. ABG does not employ a lobbyist.

ABG owns approximately 51% of Alico, Inc., ("Alico") a publicly traded Florida for-profit corporation, registered with the Florida Secretary of State. Alico is managed by a Board of nine Directors. Of the nine Board members three are related family members and six are independent persons. Alico does not currently employ a lobbyist and you are not currently a member of Alico's Board.

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ABG is a member of the Heartland Economic, Agriculture and Rural Task Force, Inc., (“Heartland”) a Florida not-for-profit corporation registered with the Florida Secretary of State. Heartland is an association of 10-12 major land owners in the central Florida region which employs a lobbyist. Furthermore, ABG is a member of several trade associations, for example, the Florida Cattlemen’s Association. ABG is not, however, a member of the Board of Directors of Heartland, nor are you.

None of the corporations or association memberships has common directors on the ABG Board of Directors.

ABG owns a certain parcel of land known as Bluehead Ranch. Bluehead Ranch is a working cattle ranch with lodging accommodations. Bluehead Ranch is a private family-owned ranch, which does not lease or rent any or all of its property to the public. You are allowed to use Bluehead Ranch and its staff and facilities by virtue of your family status. Admission to Bluehead Ranch is by invitation of a family member only.

You have access to Bluehead Ranch by virtue of your family position and family status. You have the privilege to invite individuals to stay at Bluehead Ranch and use its facilities. You often invite individuals to Bluehead Ranch to enjoy its accommodations and, at times hunt wild game. Bluehead Ranch does not allow the public to hunt on its land, nor does Bluehead Ranch or ABG conduct private hunts for compensation from any persons. The game harvested from the Bluehead Ranch land is not owned by Bluehead Ranch, or any other entity, but is wild game located in and owned by the State of Florida.

You would like to periodically invite elected public officials and/or reporting individuals, among others, to stay at Bluehead Ranch and enjoy its accommodations, facilities and hospitality. The invitations would be extended from you personally, not Bluehead Ranch, ABG or any entity associated with ABG.

Your invitation to visit Bluehead Ranch may include transportation to and from Bluehead Ranch, overnight(s) lodging, meals, beverages and hunting privileges. Historically, your family has not charged anyone when they have been invited to the Ranch, nor is it open to the public. Therefore, there is no ordinary and customary charge associated with such invitations.

For those elected officials and reporting individuals, an accurate valuation of the items to be provided to each elected official or reporting individual would be determined in compliance with Florida Statutes. Such a valuation would also include any relative of an elected official and/or reporting individual, should the relative also be invited and visit Bluehead Ranch.

If transportation via a private aircraft is provided, it would be valued at the commercial rate for the same flight plan. If the exact commercial route does not exist, then a value would be determined for the commercially available flights to a nearby airport together with an estimate of the cost of ground transportation between the airport and the destination.

Food and beverage would be valued at its fair market value. Pursuant to section 112.3148, Florida Statutes, food and beverage consumed on one calendar day is considered a single gift and would be valued as such. Lodging in a private residence can also be valued pursuant to section 112.3148, and, if so, is currently valued at \$44 per day. Section 112.3148, further provides that lodging provided on consecutive days must be considered a single gift. Additionally, the Commission on Ethics rule 34-13.500 states that when a gift given to a reporting individual is a trip, the gift is equal to the total value of the various aspects of the trip. These requirements would be followed.

You have asked whether section 11.045, Florida Statute, and section 112.3148, apply to this situation and how they apply, if they do.

Section 11.045(4)(a), Florida Statutes, provides the following:

Notwithstanding s. 112.3148, s. 112.3149, Florida Statutes, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.

This creates two questions. Does the corporation qualify as a lobbying principal and are your hunting trips considered a goodwill-expenditure to you or your guests.

The answer to the first question cannot be fully determined from the facts you have presented. ABG is a member of the Heartland which hires a lobbyist. The House and the Senate have created interpretative guidelines to apply to these situations. Those guidelines provide that when an association has employed or retained a lobbyist, the association is the principal; the individual members are not principals merely because of their membership in the association. However, if a member exerts control over the lobbyist or over the legislative agenda then the membership would be enough to qualify them. While you have noted that ABG has no presence on the board of Heartland, since the Heartland group is so small, 10-12 landowners, then that raises the question of how much control the individual members have over the lobbyist and the legislative agenda. If ABG is an active participant in these matters then they would be considered a principal.

I will, therefore, assume then for purposes of this opinion that ABG is a principal and proceed to the second question: Whether you and your guests would be receiving a prohibited expenditure

when you take hunting trips at the Ranch. The answer to this question is no.

The House has developed guidelines governing the lobbying expenditure prohibition quoted above, which have been adopted in the House Policies and Procedures Manual.

Specifically, Policy 1.55 of the House Policies and Procedures Manual provides for certain exceptions to the lobbying expenditure prohibition. Two exceptions would apply in this instance. These exceptions are:

- *Employment-related compensation and benefits.* Subject to the provisions of Policy 2.23, salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the recipient's employment, business, or service as an officer or director of a corporation or organization are not prohibited expenditures so long as they are given in an amount commensurate with other similarly situated employees, officers, or directors.
- *Relatives.* Expenditures by or for an individual who is related to the employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, grandparent, grandchild, great-grandchild, stepgrandparent, stepgreatgrandparent, stepgrandchild, or stepgreatgrandchild; any person who is engaged to be married to the employee or who otherwise holds himself or herself out as or is generally known as the person who the employee intends to marry or with whom the employee intends to form a household; or any other natural person having the same legal residence as the employee.

Since your status as a family member and stock holder allows you to visit and to bring guests to the ranch, then I believe that these provisions would apply and allow you to hunt at the ranch without it being considered an expenditure to you from the corporation. Since you are also allowed to bring guests as long as you were not doing so at the behest of the corporation then the trip would not be a prohibited expenditure. You should make it clear to such guests that they are there at your invitation and not of ABG.

The second statute you inquired about is section 112.3148, Florida Statutes, which is the gift reporting law. This statute contains exceptions which are identical to the provisions above. Therefore, these trips would not be gifts to you. However, those persons who you invite who are also subject to the gift law would be receiving a gift from you and it should be valued pursuant to the gift law.

In order to comply with section 112.3148, Florida Statutes, you should do the following: at the time you invite an elected official or reporting individual to visit Bluehead ranch, you will inform him

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or her that a reportable value must be placed on the trip, and you will timely provide each elected official and reporting individual with a letter detailing the expenses associated with the trip to and/or overnight stay at Bluehead Ranch. Since you noted the Ranch does not provide commercial hunting, then the privilege to hunt on the land does not carry a value. Should they wish to reimburse for the cost of the hunt they would need to provide ABG with the reimbursement as valued above within 90 days of the hunt pursuant to section 112.3148(8)(a), Florida Statutes. Otherwise, they will need to report it the last day of the calendar quarter following the quarter in which they received in accord with the statute.

In conclusion, I believe that it is permissible for you to personally invite elected officials and/or reporting individuals, and their relatives, to visit and stay at Bluehead Ranch. Further, I believe that such a gift is a permitted gift.

JMH/cm

cc: Office of the Speaker
Rules & Calendar Council
Committee on Ethics & Elections
Commission on Ethics
Jay Vail, Senate Counsel
Office of the Clerk
Majority Office
Minority Office