



Agenda

June 5, 2014 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
300 North Dixie Highway
West Palm Beach, FL 33401
561.355.1915
FAX: 561.355.1904
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Commissioners
Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Michael F. Loffredo
Carmine A. Priore
Clevis Headley

Executive Director
Steven P. Cullen

Intake Manager
Gina A. Levesque

Staff Counsel
Christie E. Kelley

Senior Investigator
Mark E. Bannon

Investigator
Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from May 1, 2014
- V. Legislative Update by Todd Bonlarron
- VI. Processed Advisory Opinions (Consent Agenda)
 - a.
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 14-010
 - b. RQO 14-011
 - c. RQO 14-012
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. 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.

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
PALM BEACH COUNTY, FLORIDA**

MAY 1, 2014

**THURSDAY
1:36 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Clevis Headley
Michael F. Loffredo
Carmine A. Priore

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, Esq., COE Executive Director
Christie E. Kelley, Esq., COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Salesia Smith-Gordon said that mobile phones should be turned down or turned off and that comment cards were available.

IV. APPROVAL OF MINUTES FROM APRIL 3, 2014

MOTION to approve the April 3, 2014, minutes. Motion by Michael Kridel, seconded by Michael Loffredo, and carried 5-0.

V. SUNSHINE LAW PRESENTATIONS – BEST PRACTICES

V.a. Leonard Berger, Chief Assistant County Attorney

Leonard Berger, Chief Assistant County Attorney, said that:

- The State of Florida's Sunshine Law stated that all meetings of public agencies where official actions were taken should be opened to the public to provide an opportunity to witness the deliberative process.
- Private meetings or phone conversations between two or more commissioners regarding an upcoming public meeting agenda item circumvented the Sunshine Law.
- The courts uniformly interpreted the Sunshine Law to cover all actions involving the decision-making process.
- Communication between two or more commissioners, including asking someone such as staff about another commissioner's thoughts regarding an upcoming agenda item, violated the Sunshine Law.
- Other Sunshine Law regulations included:
 - reasonable notice of meetings;
 - meetings must be held in a public place; and,
 - meeting minutes were required.
- A knowing Sunshine Law violation was a second-degree misdemeanor with possible civil penalties.
- Agency decisions could be voided if linked to a Sunshine Law violation.
- Agencies would be required to pay attorney's fees and costs to the prevailing party that alleged a Sunshine Law violation.

V. – CONTINUED

V.b. Daniel Funk, Assistant State Attorney

Daniel Funk, Assistant State Attorney, said that:

- The State Attorney’s Office (SAO) worked with its public corruption unit, the Commission on Ethics (COE), and the Office of the Inspector General to address various countywide ethics issues.
- Two rules of thought existed for the commissioners’ consideration.
 - The community could find out how the commissioners made their decisions regarding agenda items.
 - Issues requiring a decision-making process by the commissioners must be publicly held.
- The Sunshine Law required that any form of public record must be maintained.

Mr. Berger clarified that:

- Commissioners receiving an e-mail message from someone requesting a response should respond only to the sender and not to the other commissioners.
- Sunshine Law exceptions and statutory “carve outs,” such as attorneys and governing bodies meeting privately to assess pending litigation, were often called “shade” meetings.

Mr. Funk commented that commissioners could avoid an appearance of impropriety by choosing not to meet other commissioners on a personal basis. He added that he would encourage discussions about the Sunshine Law’s importance with students taking ethics classes.

Mr. Berger suggested that discussions about ethics cases should be limited to settled, and not pending, cases.

VI. PROPOSED ADVISORY OPINIONS (CONSENT AGENDA)

Steven Cullen, Esq., COE Executive Director, advised that the COE members could discuss or pull any consent agenda item.

VI.a. Request for Opinion (RQO) 14-007

Chair Smith-Gordon said that she was uncertain whether to refrain from voting on RQO 14-007 since she lived in the Town of Haverhill (Haverhill), and her husband was a Haverhill councilperson. She added that she had no financial gain in the item.

Mr. Cullen said that procedurally, if no financial gain existed, the COE would vote on the consent agenda opinions.

MOTION to approve processed advisory opinion letter RQO 14-007. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

Commissioner Carmine Priore asked whether RQO 14-007 and RQO 14-008 were part of the consent agenda or were being pulled and voted on separately. He said that the consent agenda items would receive one vote.

Chair Smith-Gordon said that RQO 14-008 was yet to be discussed. She added that both items were being individually discussed since they were separately listed on the agenda.

Commissioner Priore said his understanding of the consent agenda was that all listed consent items would be accepted together and not individually.

Chair Smith-Gordon said that:

- The COE was reviewing substantive matters, and that she believed Commissioner Priore was referencing form over substance.
- A vote would be taken if there was no issue or discussion to remove RQO 14-008 from the consent agenda.
- Collectively voting on the consent agenda items could be discussed at a later date.

VI. – CONTINUED

VI.b. RQO 14-008

MOTION to approve processed advisory opinion letter RQO 14-008. Motion by Michael Lofreddo, seconded by Clevis Headley, and carried 5-0.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 14-009

Christie Kelley, Esq., COE staff counsel, said that:

- A County employee, who also worked as a sales representative for Schaeffer's Specialized Lubricants (Schaeffer's), asked whether he could sell the product to his County employer. The employee believed that the County's fleet maintenance department could benefit from using the product.
- Staff submitted that:
 - Best practices included refraining from using his official County position, title, and/or e-mail messages to sell the product to the County; however, he was not prohibited from selling it in his personal capacity and on his own time.
 - The County employee must follow all procedures that were available to any representatives who sold products to the County.
 - He must comply with the Code of Ethics' part-time employment section and obtain a conflict of interest waiver for his outside employment prior to the County entering into a contract with Schaeffer's.
 - The County employee did not have an ownership interest in the company, which differed from previously proposed advisory opinions.

VIII.a. – CONTINUED

- The employee should not wear his County Fire Rescue uniform while soliciting the County.

Chair Smith-Gordon suggested that the proposed advisory opinion contain language regarding the uniform restriction.

Vice Chair Michael Kridel said he believed that it would be difficult for the County's fleet maintenance department to separate its relationship with the County employee from that of a sales representative.

Ms. Kelley commented that the fleet maintenance department should consider the product by itself.

Vice Chair Kridel stated that the proposed advisory opinion seemed to affect the prospective customer more than the County employee. He added that it was difficult to place individuals in a position where they needed to consciously remind themselves that sales representatives were not County employees influencing their buying decision.

Mr. Cullen said that the product purchase was not considered under a competitive Request for Proposal since it was a County employee requesting the opinion and not the County; and that staff based its opinion on the employee's Code compliance.

Ms. Kelley said that the third sentence under the paragraph entitled, "Answer" could be amended to read: "Best practices would include refraining from using your official position, title, County e-mail, or wearing your County uniform while pitching the Schaeffer's product to the County."

Commissioner Loffredo said that the issue would be moot if someone other than the County employee solicited the product.

MOTION to approve proposed advisory opinion letter RQO 14-009 as amended to include the change as discussed. Motion by Michael Loffredo, seconded by Clevis Headley, and carried 5-0.

IX. MODEL RULE POLICY

Mr. Cullen said that:

- Staff formulated a model rule policy based on RQO 14-001.
- A beneficial interest and disclosure of ownership form would be given to municipalities covered under the Code's jurisdiction.
- Persons appearing before boards or commissions would fill out the form disclosing all pertinent interest or ownership in a pending matter.
- Completing the form was voluntary, and presenting it was for informational purposes.
- The form was discussed with Richard Radcliffe, League of Cities (LOC) Executive Director.
 - The LOC would be an excellent vehicle to introduce the to the municipalities.
 - Making the form more user friendly was one element of the discussion.

Commissioner Kridel commented that listing on the form all persons or corporate entities holding a 5-percent or more ownership interest in a disclosed entity was a good threshold. He asked how the Florida statutes distinguished children from individuals since the form listed them as persons to be included.

Mr. Cullen stated that including a list of what constituted a person would encourage anyone who used the form to be as comprehensive as possible.

Commissioner Kridel said that listing children on the form could bring forth questions.

Mr. Cullen said that staff could incorporate his suggestion. He clarified that staff was requesting direction; therefore, no vote on the item was needed.

IX. – CONTINUED

BOARD DIRECTION:

Chair Smith-Gordon requested that staff disseminate the form to the municipalities.

Mr. Cullen said that staff would ask municipalities to voluntarily consider using the form with the idea that it would provide board and commission members the ability to screen for voting conflicts. He added that staff could add language stating that completing the form did not end the board and commission members' responsibility to ensure that a voting conflict did not exist.

Commissioner Priore said he questioned whether the 5-percent ownership interest could be voluntarily changed since filling out the form was voluntary.

Mr. Cullen explained that the 5-percent threshold was consistent with the Code.

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: Legislative Session.

Mr. Cullen stated that:

- The legislative session ended May 2, 2014.
- Senator Joseph Abruzzo withdrew Senate Bill 1474 from further consideration after it passed the Senate Appropriations Committee. The companion bill was withdrawn by Representative Lake Ray.
- Both legislators held a press conference to suggest holding an August 2014 ethics summit for strengthening local ethics commissions.
- Senate Bill 846, which would change some elements of State law, was still pending.
- Discussion of legislative matters could be deferred until the next COE meeting, along with considering whether to recommend COE ordinance changes to the Board of County Commissioners.

X. – CONTINUED

X.b.

DISCUSSED: Ethics Training.

Mr. Cullen stated that:

- Ethics training outreach to the municipalities was completed.
- Updated COE contact cards were printed.
- Some municipal officials brought forth questions during the outreach. Staff provided them with materials and scheduled several live training sessions.
- No pending legislative bills impacted COE operations.

XI. COMMISSION COMMENTS – None

XII. PUBLIC COMMENTS – None

XIII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Michael Kridel, seconded by Clevis Headley, and carried 5-0.

At 2:32 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

VIII Proposed Advisory Opinions

RQO 14-010 Diane Walker

The Vice Mayor of the City of Pahokee asked if the funds solicited by her for a non-profit organization's yearly luncheon needs to be reported pursuant to the Palm Beach County Code of Ethics.

Staff submits the following for COE review: As an elected official, the Vice Mayor is identified by state law as a state reporting individual for purposes of gift reporting. As a state reporting individual, she is required to comply with the gift reporting requirements as contained within state law. However, under the Palm Beach County Code of Ethics, any solicitation must be disclosed. The solicitation form must contain the name of the non-profit organization, the event for which the funds were solicited, the name of any person or entity that was contacted, and the amount of funds solicited. The solicitation form must be filed with the COE within 30 days after the event or if it is not related to an event then within 30 days from the date of the solicitation.

RQO 14-011 Matthew Hyman

An employee of Palm Beach County Fire Rescue asked if a prohibited conflict of interest is created if his outside business bids for and is awarded a contract with Palm Beach County, his public employer?

Staff submits the following for COE review: There are two potential exceptions where the employee could enter into a contract with the County without violating the Code's contractual relationship prohibition. Section 2-443(e)(1) provides an exception for contracts entered into under a process of sealed, competitive bidding, where his outside business is the lowest bidder, provided that he has not participated in the bid specifications or determination of the lowest bidder, has not used his position in any way to influence the award, and has filed a statement with the Supervisor of Elections and the COE disclosing the nature of his interest in the business prior to submitting the bid. Section 2-443(e)(4) also provides an exception when the total amount of the contracts or transactions in the aggregate between his outside business and the County does not exceed five hundred dollars (\$500) per calendar year.

RQO 14-012 Joe Kyles

A commissioner for the City of South Bay asked whether it would be a prohibited conflict of interest for him to vote on matters involving Okeelanta Corporation since that corporation was his former employer and contributed toward a pension plan which currently pays him retirement benefits.

Staff submits the following for COE review: The commissioner is not prohibited from voting on matters involving Okeelanta Corporation, which may come before his City Commission, as long as the matters do not involve issues that would affect his pension benefits and result in a special financial benefit to him. He would be prohibited from voting on any matter involving Okeelanta Corporation if it would result in a special financial benefit to him.

June 5, 2014

Ms. Diane L. Walker, Vice Mayor
City of Pahokee
207 Begonia Drive
Pahokee, Florida 33476

Re: RQO 14-010
Solicitation on behalf of charitable organization

Dear Ms. Walker,

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 June 5, 2014.

QUESTION:

Do funds solicited by you for a non-profit organization's yearly luncheon need to be reported pursuant to the Palm Beach County Code of Ethics?

ANSWER:

As Vice Mayor of the City of Pahokee, you are identified by state law as a state reporting individual for purposes of gift reporting. As a state reporting individual, you are required to comply with the gift reporting requirements as contained within state law.¹

Under the Palm Beach County Code of Ethics (Code of Ethics), you are allowed to solicit funds on behalf of non-profit organizations from anyone as long as they do not have a pending application or award of any nature before the City.² However, you may not use City staff or resources to solicit the contributions.³ One of the requirements, under the Code of Ethics, is that any solicitation must be disclosed. The solicitation form must contain the name of the non-profit organization, the event for which the funds were solicited, the name of any person or entity that was contacted, and the amount of funds solicited.⁴ The solicitation form must be filed with the COE within 30 days after the event or if it is not related to an event then within 30 days from the date of the solicitation.

Additionally, you cannot use your position in a manner which would result in a special financial benefit to you or a non-profit organization where you serve as an officer or director. Lending your name and official title to a fundraising effort would per se constitute using your employment to give a special financial benefit the organization.⁵ In order to avoid violating the Code of Ethics, any solicitation you make needs to exclude any reference to your public title.

FACTS:

You are the Vice Mayor of the City of Pahokee, and you were recently selected to serve as Chair of a non-profit organization, The Glades Inter-agency Network. The Chair also serves as the Event Chair.

¹ RQO 11-089

² §2-444(h)(1)

³ §2-444(h)(3)

⁴ §2-444(h)(2)

⁵ RQO 12-081

This organization is comprised of various social agencies from the Glades and the West Palm Beach areas.

Funds are solicited once a year for a luncheon. Two businesses were solicited by phone, and each business donated \$1,000. The businesses that contributed to the luncheon do not have any contracts or transactions with the City. The funds received are just enough to cover the expenditures for the luncheon.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a) and §2-444(h) of the Code of Ethics:

Sec. 2-443 Prohibited conduct.

- (a) Misuse of public office or employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

Sec. 2-444 Gift law

- (h) Solicitation of contributions on behalf of a non-profit charitable organization.
- (1) Notwithstanding the prohibition on gifts as outlined in subsections (a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.
 - (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the commission on ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on ethics. The form shall be filed within thirty (30) days from the occurrence of the event for which the solicitation was made, or if no event, within thirty (30) days from the occurrence of the solicitation.
 - (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions described in this subsection.

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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen
Executive Director

CEK/gal

PROPOSED

June 5, 2014

Mr. Matthew Hyman
Palm Beach County Fire Rescue
7950 Enterprise Center Cir.
Boynton Beach, FL 33437

Re: RQO 14-011
Contractual Relationships Exceptions

Dear Mr. Hyman,

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 June 5, 2014.

QUESTION:

Is a prohibited conflict of interest created if your outside business bids for and is awarded a contract with Palm Beach County, your public employer?

ANSWER:

Based on the facts you have submitted, you may not use your official position to give or influence others to give you or your outside business a special financial benefit. In addition, the Palm Beach County Code of Ethics (Code) prohibits you or your outside business from contracting with the County, unless one of several exceptions applies. Based upon the information you have provided, as an owner of the outside business you are not eligible for a part-time employment waiver¹, your business is not the sole source of signage in the County², and the signs would not constitute an emergency purchase³.

However, under the facts presented, there are two potential exceptions where you could enter into a contract with the County without violating the Code's contractual relationship prohibition. Section 2-443(e)(1) provides an exception for contracts entered into under a process of sealed, competitive bidding, where your outside business is the lowest bidder, provided that you have not participated in the bid specifications or determination of the lowest bidder, have not used your position in any way to influence the award, and have filed a statement with the Supervisor of Elections and the COE disclosing the nature of your interest in the business prior to submitting the bid. If each bid submission fully complies with these requirements, the Code does not prohibit you or your outside business from contracting with the County.⁴

Section 2-443(e)(4) also provides an exception when the total amount of the contracts or transactions in the aggregate between an employee's outside business and their public employer does not exceed five hundred dollars (\$500) per calendar year. Therefore, if the total amount of your outside business's contracts or transactions with the County does not exceed \$500, in the aggregate, then you are not prohibited from contracting with the County.

¹ RQO 12-076; RQO 13-008

² §2-443(e)(3)

³ §2-443(e)(2)

⁴ RQO 11-090

As long as your bid submission comports with one of these exceptions, you are not prohibited from applying and accepting bids awarded under the exceptions to the contractual relationship prohibition.

FACTS:

The facts, as we understand them, are as follows:

You have worked for Palm Beach County for over 9 years, and you currently work for Palm Beach County Fire Rescue as a Firefighter Paramedic. You are also a 50% owner of a company, F.D. Signworks, LLC, which sells signs, vehicle lettering, banners, and stickers. You were recently approached about doing business with the County officially, and you are interested in bidding on County jobs, if allowed. Your business is not the only signage business in Palm Beach County. You stated that you would not use your position with the County as any kind of leverage, and you would not be conducting this business while on duty with Palm Beach County Fire Rescue.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a), §2-443(b), §2-443(d), and §2-443(e) of the Code:

Section 2-443(a) prohibits you, as a public employee, from using your official position with the county to benefit yourself or your outside business, in a manner not shared with similarly situated members of the general public. Section 2-443(b) also prohibits you from taking any official action to corruptly secure or attempt to secure a special privilege or benefit for yourself or for anyone else. As defined by the Code, corruptly means done with a wrongful intent and for the purpose of obtaining a special benefit for any person, inconsistent with the proper performance of your public duties.⁵

Section 2-443(d) prohibits you from entering into any contract or other transaction to provide goods or services to the public entity you serve, including any contract or transaction between your public employer and your outside employer or business. An employee's outside business is defined as any entity doing business with, or being regulated by, their government employer in which the employee has an ownership interest. An ownership interest means at least five (5) percent of the total assets are owned by the employee.⁶ However, there are enumerated waivers and exceptions to Section 2-443(d).

Section 2-443(e) provides the exceptions to the contractual prohibition provision. This exception provision allows a public employee to enter into a contract with their public employer if:

- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee or member of his or her household has in no way participated in the determination of the bid specifications or the determination of the lowest bidder;
 - b. The official or employee or member of his or her household has in no way used or attempted to use the official or employee's influence to persuade the agency, governmental entity or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
 - c. The official or employee, prior to or at the time of the submission of the bid, has filed a statement with the supervisor of elections and the commission on ethics, disclosing the nature of the interest in the outside employer or business submitting the bid.

⁵ § 2-443(b)

⁶ § 2-442

- (2) An emergency purchase or contract which would otherwise violate a provision of subsection (d) must be made in order to protect the health, safety, or welfare of the citizens of the county or municipality as applicable.
- (3) The outside employer or business involved is the only source of supply within the county or municipality as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.
- (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.
- 5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
 - a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and
 - b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable; and
 - c. The employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
 - d. The employee's job responsibilities and job description will not require him to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
 - e. The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and
 - f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath.

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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen
Executive Director

CEK/gal

June 5, 2014

Mr. Joe Kyles, Commissioner
City of South Bay
335 SW 2nd Ave
South Bay, FL 33493

Re: RQO 14-012
Conflict of Interest/Misuse of Office

Dear Mr. Kyles,

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 June 5, 2014.

QUESTION:

Would it be a prohibited conflict of interest for you to vote on matters involving Okeelanta Corporation since that corporation was your former employer and contributed toward a pension plan which currently pays you retirement benefits?

ANSWER:

Based on the facts you have submitted, you are not prohibited from voting on matters involving Okeelanta Corporation, which may come before the City Commission, as long as the matters do not involve issues that would affect your pension benefits and result in a special financial benefit to you. The Palm Beach County Code of Ethics (Code of Ethics) prohibits you from using your official position in a manner which would result in a special financial benefit to you or an outside employer or to corruptly secure a special benefit. Since you are retired, Okeelanta Corporation is no longer your outside employer. Therefore, under these facts, you would only be prohibited from voting on a matter involving Okeelanta Corporation if it would result in a special financial benefit to you in terms of your pension.

Your responsibility to comply with the Code of Ethics is ongoing. Because the issues that you may be called to vote upon are speculative at this point, best practices dictate that you carefully review each issue coming before the City Commission to ensure that your participation and vote complies with the Code of Ethics and does not give you a special financial benefit. Depending on the factual scenario, if a conflict exists which would result in you receiving a special financial benefit regarding your pension benefits or any other matter within the purview of the Code of Ethics, in order to comply with the code, you will need to publicly disclose the nature of the conflict before the City Commission discusses the matter, abstain from participating and voting on the matter, and file a state voting conflict form (8B).

FACTS:

The facts, as we understand them, are as follows:

You are currently a commissioner in the City of South Bay. You worked for Okeelanta Corporation for 20 years before retiring. Okeelanta Corporation had a contract with a union, the Local Lodge 2152 of the International Association of Machinists and Aerospace Workers, which stated that Okeelanta Corporation would pay toward an employee's pension for every hour they worked, up to 40 hours per week. After five years of employment, the employee is vested in this pension system. When vested

employees retire from Okeelanta Corporation, they are entitled to receive the pension benefits from the IAM National Pension Fund. This agreement has been between the union and Okeelanta since 1965. All employees who are members of the union are entitled to this pension benefit. You have been a lifetime member of this union, and you receive pension checks from the IAM National Pension Fund each month.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a), §2-443(b), and §2-443(c) of the Code of Ethics:

Sec. 2-443 Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner.
- (b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics.

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 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen
Executive Director

CEK/gal