



Amended Agenda

November 5, 2015 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm. Executive Session cases are canceled

Palm Beach County
Commission on Ethics
300 North Dixie Highway
West Palm Beach, FL 33401
561.355.1915
FAX: 561.355.1904
Hotline: 877.766.5920

E-mail:
ethics@palmbeachcountyethics.com

Commissioners
Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sarah L. Shullman

Interim
**Executive Director/
Senior Investigator**
Mark E. Bannon

Intake Manager
Gina A. Levesque

Staff Counsel
Christie E. Kelley

Investigator
Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from September 16, 2015
- V. Approval of Minutes from October 1, 2015
- VI. Executive Session (canceled)
 - a. C15-019
 - b. C15-020
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 15-045
 - b. RQO 15-046
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Proposed Advisory Opinions
 - a. RQO 15-044
- X. Executive Director Update; Applicant Short-list; and Interview date discussion (Leilani Yan)
- XI. Interim Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. 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**

OCTOBER 1, 2015

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sarah L. Shullman

STAFF:

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

ADMINISTRATIVE STAFF:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Chair Michael Kridel requested that all mobile devices be silenced.

Chair Kridel announced that there would be a recess at 1:45 p.m. for the executive session. He stated that COE Executive Director Steven Cullen's departure would be discussed later.

IV. APPROVAL OF MINUTES FROM SEPTEMBER 3, 2015

MOTION to approve the September 3, 2015, minutes. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. RQO 15-042

V.b. RQO 15-043

MOTION to accept the advisory opinions as published. Motion by Clevis Headley, seconded by Judy Pierman, and carried 5-0.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

RECESS

At 1:33 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 2:13 p.m., the meeting reconvened with Chair Kridel, Vice Chair Headley, and Commissioners Loffredo, Pierman, and Shullman present.

VII. EXECUTIVE SESSION

VII.a. C15-007

Vice Chair Headley read the following Public Report Finding No Probable Cause and Order of Dismissal as discussed during the executive session:

Complainant, Joel Rutsky, filed the above-referenced complaint on March 23, 2015, alleging that Respondent, Pam Triolo, Mayor of the City of Lake Worth, violated Section 2-443(a) of the Palm Beach County Code of Ethics.

VII.a. – CONTINUED

Pursuant to Section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. On October 1, 2015, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, Legal Sufficiency Determination, and Report of Investigation. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore, it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Pam Triolo, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 1, 2015.

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Order of Dismissal.)

VII.b. C-15-008

Vice Chair Headley read the following Public Report Finding No Probable Cause and Order of Dismissal as discussed during the executive session.

Complainant, Joel Rutsky, filed the above-referenced complaint on March 23, 2015, alleging that Respondent, Michael Bornstein, City Manager of the City of Lake Worth, violated Section 2-443(b) of the Palm Beach County Code of Ethics.

VII.b. – CONTINUED

Pursuant to Section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. On October 1, 2015, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, Legal Sufficiency Determination, and Report of Investigation. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore, it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Michael Bornstein, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 1, 2015.

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Order of Dismissal.)

VIII. EXECUTIVE DIRECTOR COMMENTS

VIII.a.

DISCUSSED: Expression of Thanks.

Steven P. Cullen, COE Executive Director, thanked all the other commissioners for their service during the past two-and-a-half years that he served as Executive Director. He said that the COE made rule, procedure, and ordinance changes, training revisions; and it litigated high-profile cases. He added that he looked forward to being of any appropriate assistance in the future.

IX. COMMISSION COMMENTS

IX.a.

DISCUSSED: Expression of Thanks.

Commissioner Michael Loffredo stated that Mr. Cullen was a fine example to follow in the COE's ethical journey. He said he hoped that Mr. Cullen would stay in touch.

IX.b.

DISCUSSED: Good Wishes.

Commissioner Headley said that Mr. Cullen was always available to answer questions and served as a fine example of professionalism representing the highest standards of integrity. He said he wished him well in his future endeavors.

IX.c.

DISCUSSED: Good Luck.

Commissioner Pierman stated that in her five months of service, her journey under the tutelage of Mr. Cullen was an interesting experience. She said that she wanted Mr. Cullen to accept her Ohio buckeye for luck in his next venture.

IX.d.

DISCUSSED: Public Trust.

Commissioner Sarah Shullman said that she received intensive guidance and training in a brief period, and that she appreciated Mr. Cullen's professionalism and community accomplishments. She said his good example led her to become a volunteer advocate, and she thanked him for fostering public trust in government.

COMMISSION COMMENTS – CONTINUED

IX.e.

DISCUSSED: Parting Gift.

Chair Kridel said that Mr. Cullen was thoroughly responsive in his executive director role, and that he demonstrated character and integrity. He said that he wished to present a parting gift from all the commissioners.

X. PUBLIC COMMENTS

X.a.

DISCUSSED: Cullen Farewell.

Richard Radcliffe, Palm Beach County League of Cities Executive Director, said that Mr. Cullen's unbiased approach was refreshing, and that he would be missed.

X.b.

DISCUSSED: Incoming Director.

Mark Bannon, COE Senior Investigator, said that he served for nearly five years on the COE staff under two executive directors. During that time, he said, the entire training program was revamped to be more user-friendly and open to the public, which proved a good fit for the COE. He added that as the incoming interim director, he was pleased to have worked with both Alan Johnson and Mr. Cullen, and that he would continue with their missions.

Chair Kridel announced that Mr. Bannon would assume the role of Interim Executive Director.

Gina Levesque, COE Intake Manager, said that Mr. Cullen's work enabled a smooth transition, and that she appreciated all that he accomplished for the COE staff.

XI. ADJOURNMENT

At 2:27 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

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

SEPTEMBER 16, 2015

**WEDNESDAY
9:13 A.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman – Arrived later
Sarah L. Shullman

STAFF:

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

ADMINISTRATIVE STAFF:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Michael Kridel announced that COE Executive Director Steven Cullen's resignation was effective October 2, 2015.

IV. DISCUSSION REGARDING EXECUTIVE DIRECTOR REPLACEMENT

IV.a. Process Review by Leilani Yan

Human Resources (HR) Recruitment and Selection Manager Leilani Yan stated that:

- The COE Executive Director recruitment conducted in 2013 was similar to the County Inspector General's recruitment process.
 - The original newspaper advertisement ran for 21 days and drew 57 applicants.
 - Interview panel members (panel) received an information packet containing applications and resumes. The panel submitted its top ten choices to HR two weeks later to short-list candidates and schedule interviews.
 - The HR staff provided structure, guidelines, and suggested procedures. Six interviews were completed in one day. Candidates submitted references and completed professional conduct questionnaire forms, which were available to the COE.
 - Thorough background checks were completed prior to the interviews. Panelists submitted suggested interview questions to HR staff to assemble. Applicants answered written exercises.
 - A salary range was included in the 2013 job advertisement (ad) and was negotiable based on qualifications.
 - This procedure could be followed at the COE's request.
- Interviews were broadcast live by County PBC-TV Channel 20, and a hiring decision was made the same day. The entire process lasted approximately 12 weeks.

(CLERK'S NOTE: Commissioner Judy M. Pierman joined the meeting.)

V. DISCUSSION REGARDING INTERIM EXECUTIVE DIRECTOR

V.a. Process Review by Brad Merriman

Assistant County Administrator Brad Merriman stated that:

- Salary ranges for County jobs were flexible. The highest amount was not advertised.
- The COE and HR staff would establish minimum job qualifications.
- Reference checks would be conducted for the applicants who satisfied the minimum requirements.
- The job ad would be comprehensive so that applicant diversity was achieved. The various bar associations would run the ad according to their scheduled publishing dates.

Ms. Yan confirmed that each bar association in Florida would have the ad, as well as some national organizations such as *The National Forum for Black Public Administrators*. She said that HR would focus on State applicants and those who were admitted to the Florida Bar and were living out of State.

(CONTINUED – Page 4)

VI. EXECUTIVE DIRECTOR COMMENTS

Executive Director Cullen recommended that the COE follow the established HR recruitment process to attract and identify qualified applicants.

VII. COMMISSION COMMENTS

(CLERK'S NOTE: Chair Kridel inadvertently called the meeting adjourned.)

Executive Director Cullen stated that a vote was needed to confirm that the HR's recommended recruitment process was acceptable.

MOTION to accept the process outlined by Leilani Yan and Brad Merriman. Motion by Michael Loffredo, seconded by Clevis Headley, and carried 5-0.

(CLERK'S NOTE: Chair Kridel inadvertently called the meeting adjourned.)

V.a. – CONTINUED

Assistant County Administrator Merriman continued by saying that:

- An interim executive director would serve between the period following Executive Director Cullen's departure on October 2, 2015, and the final candidate selection.
 - An interim director chosen from among the staff was typically given a temporary pay increase, although the COE could follow any selection method it preferred.
 - Interested in-house candidates would be interviewed in a brief public session.
 - An interim appointment was needed within two weeks.

Chair Kridel asked Mark E. Bannon, COE Senior Investigator, whether he wished to be considered for the interim executive director position, and for the regular fulltime job as well.

Mr. Bannon stated that he was interested in serving as the interim executive director, and that he would apply for the regular fulltime job.

Chair Kridel asked Christie E. Kelley, COE Staff Counsel, whether she wished to be considered for the interim executive director position, and for the regular fulltime job.

Ms. Kelley stated that she joined the COE staff a year-and-a-half ago, and therefore lacked sufficient experience to consider applying for either the interim or the fulltime job.

MOTION to nominate and appoint Mark Bannon as the interim director of the Commission on Ethics. Motion by Michael Loffredo, seconded by Clevis Headley, and carried 5-0.

Mr. Merriman commented that a County interim appointment usually conveyed either a 10 percent pay increase or the minimum pay grade, whichever was greater.

Mr. Bannon stated that his salary was well below the minimum pay grade.

V.a. – CONTINUED

Mr. Merriman agreed to apply standard County salary-level allowances to the interim director position.

Chair Kridel stated that the start date for the interim director was the next business day following October 2, 2015.

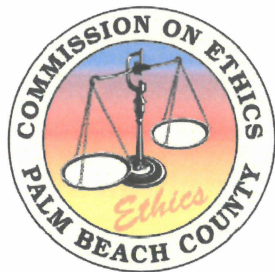
VIII. PUBLIC COMMENTS – None

IX. ADJOURNMENT

At 9:45 a.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Commissioners

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sarah L. Shullman

Interim Executive Director
Mark E. Bannon

October 26, 2015

Ms. Lina Aragon
Coalition for Independent Living Options
6800 Forest Hill Blvd.
West Palm Beach, FL 33413

Re: RQO 15-045
Conflict of Interest

Dear Ms. Aragon,

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:

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit you from serving as a Palm Tran Service Board (PTSB) member if your husband works for the Solid Waste Authority of Palm Beach County and if you may seek employment with Palm Beach County or with Palm Tran?

ANSWER:

Based on the facts submitted, your husband's employment at the Solid Waste Authority would not prohibit you from serving as a Palm Tran Service Board member. In addition, the Code does not prohibit you from seeking employment with the County or with Palm Tran.

Under the Code, officials are prohibited from using their official positions in any way to give specified persons and entities a special financial benefit.¹ Among those specified persons and entities are yourself and your husband's outside employer.² Here, under the Code, you are not prohibited from seeking employment with the County or with Palm Tran as long as you do not use your position on the PTSB or influence others to take or fail to take any action which would result in giving you a special financial benefit. In addition, the Code generally prohibits you from using your position on the PTSB to give your husband's outside employer a special financial benefit. However, your husband's outside employer, the Solid Waste Authority, is a governmental entity. The Code exempts governmental entities from the definition of "outside employer." Therefore, your husband's employment would not create a prohibited conflict of interest for you.

¹ §2-443(a)

² Id.

However, since the COE cannot advise you regarding speculative facts and circumstances, this opinion does not apply to accepting employment with the County or with Palm Tran because you do not know what position you will be offered and for which department you will work. If your circumstances change and the County or Palm Tran extends a job offer to you, you will need to request an opinion regarding a conflict of interest between the PTSB membership and the County or Palm Tran employment.

FACTS:

In general, you would not be entitled to an advisory opinion because you are not currently under the jurisdiction of the Code of Ethics. COE Rule of Procedure 2.2 states, in relevant part, that only persons who are under the jurisdiction of the Code of Ethics may request an advisory opinion regarding the interpretation or application of the Code.³ However, the Code defines "Advisory Board" as any advisory or quasi-judicial board created by the board of county commissioners and defines "Official" as a member appointed by the board of county commissioners to serve on any advisory, quasi-judicial or any other board of the county, state, or any other regional, local, municipal, or corporate entity.⁴ Thus, as an appointed member of the PTSB, you would be considered an "official" and would be subject to the Code. Since your appointment to the PTSB would bring you under the Code, and you are seeking an opinion proactively to avoid any potential issues, the COE will make an exception and provide an opinion.

You are an independent living specialist for the Coalition for Independent Living Options, an agency which receives funding from Palm Beach County. You are under consideration to become a member of PTSB. The PTSB consists of 13 members and was delegated the authority to approve Palm Tran fixed route transportation service adjustments. The PTSB also serves in an advisory function regarding matters concerning or impacting public transportation. Members of the Palm Tran Service Board are under the jurisdiction of the Code.

You advised that your husband works for the Solid Waste Authority, the government entity responsible for providing an economical and environmentally conscious Integrated Solid Waste Management System for Palm Beach County.

LEGAL BASIS:

The legal basis for this opinion is found in Rule of Procedure 2.2 and §2-443(a) of the Code:

Rule 2.2 Persons Eligible to Receive an Advisory Opinion

A person who is subject to any of the laws listed in paragraph 2.1(a) of this section may request an opinion regarding the interpretation or application of any of the ordinances under the Commission's jurisdiction to himself or herself.

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:

³ COE Rule of Procedure 2.2

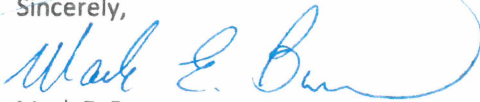
⁴ §2-442

- (1) Himself or herself;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;

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
Interim Executive Director

CEK/gal



Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sarah L. Shullman

Palm Beach County Commission on Ethics

Interim Executive Director
Mark E. Bannon

October 29, 2015

Ms. Monica Powery, Director
Leisure Services Department
City of Greenacres
5800 Maleluca Lane
Greenacres, FL 33463

Re: RQO 15-046
Gift law

Dear Ms. Powery,

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:

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit City of Greenacres (City) employees from being recognized for being instrumental in championing program quality and accepting a monetary award from a non-profit organization who is neither a vendor nor lobbyist of the City?

ANSWER:

Based on the facts submitted, the Code does not prohibit the City employees from accepting an award for professional or civic achievement, even where such an award is monetary.

The Code defines "gift" as the transfer of anything of economic value without adequate and lawful consideration.¹ Under the Code, public employees are prohibited from accepting a gift from any person or entity in return for any public action or legal duty as a *quid pro quo* for the gift.² The Code also prohibits employees or officials from accepting a gift with a value in the aggregate of over \$100 from a vendor, a lobbyist or a principal or employer of a lobbyist who lobbies their governmental employer. In addition, employees must report gifts with a value over \$100³. However, Sec. 2-444(g)(1) provides exceptions to the definition of a gift. One such exception is an award for professional or civic achievement.⁴

Here, the City employees are being recognized by Prime Time Palm Beach County's iMotivate program for their work in achieving a "maintenance level" status in the Palm Beach County Quality Improvement

¹ §2-444(g)

² §2-444(e)(1, 2 & 3)

³ §2-444(f)

⁴ §2-444(g)(1)c.

System. Since the award from the iMotivate program is an award for the employees' professional achievement, it would not be considered a gift. In addition, since none of the entities involved are vendors, lobbyists, or principals or employers of lobbyists who lobby the City, the \$100 value limit would not apply. Furthermore, based on the information provided, the employees who will be receiving the awards appear to be non-state reporting individuals. Since an award for professional achievement is an exception to the definition of a gift, the City employees are not required to report the award to the COE.

FACTS:

You are the Purchasing Administrator for the City of Greenacres and requested an advisory opinion. COE staff received information from both you and Michele Thompson, Director of the Leisure Services Department.

Prime Time Palm Beach County (Prime Time), a local non-profit organization dedicated to quality out-of-school time programming, notified you that the City will be recognized with a one-time incentive award payment of \$10,000 through Prime Time's iMotivate program. iMotivate is a performance-based recognition program that awards financial incentives to out-of-school time programs that demonstrate advanced performance and an elevated commitment to championing program quality. The City earned this incentive award due to its hard work in achieving a "maintenance level" status in the Palm Beach County Quality Improvement System.

A payment of \$8,000 will be wired directly to the City of Greenacres. In addition, three City employees "who were most instrumental in championing program quality and helping the program retain its 'maintenance level' status" will be recognized, and each will receive a check, with a combined total of \$2,000. The three employees who will be recognized are the youth programs supervisor, the assistant youth programs supervisor, and the clerical assistant.

Prime Time, Early Learning Coalition of Palm Beach County, Inc. (ELC), and the Children's Services Council of Palm Beach County (CSC) are involved in the funding of the iMotivate award. Prime Time, ELC, and CSC are not vendors of the City, do not lobby the City, and do not employ lobbyists who lobby the City. ELC is a local non-profit organization, which receives funding from the state and federal governments, as well as local funding through its partnership with the Children's Services Council of Palm Beach County. ELC is the fiscal agent responsible for drafting payments to eligible Quality Improvement System programs. The funding for the iMotivate award is provided by CSC. CSC is an independent special district established by Palm Beach County voters, who dedicated a source of funding so more children are born healthy, remain free from abuse and neglect, are ready for kindergarten, and have access to quality afterschool and summer programming.

LEGAL BASIS:

The legal basis for this opinion is found in §2-444(e) and §2-444(g)(1)c. of the Code:

Sec. 2-444. Gift law.

- (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.

(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.

- 1) Exceptions. The provisions of subsection (g) shall not apply to:
 - c. Awards for professional or civic achievement;

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,
Interim Executive Director

CEK/gal

Date

Mr. Glen Torcivia
701 Northpoint Parkway, Ste 209
West Palm Beach, FL 33407

Re: RQO 15-044
Cone of Silence

Dear Mr. Torcivia,

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:

QUESTION:

Does the Palm Beach County Lobbyist Registration Ordinance's cone of silence provisions apply to communications between members of the Municipal Public Safety Communications Consortium of Palm Beach County (MPSCC) and the officials and employees of the cities of Boca Raton, Boynton Beach, and Delray Beach, where those cities have entered into Interlocal Agreements with Palm Beach County concerning use of a proposed countywide public safety radio system (County RFP)? The Palm Beach County Board of County Commissioners ratified the selection of the vendor for the County RFP after a competitive bidding process, and the specific terms of the contract for the County RFP are still being negotiated.

ANSWER:

Based on the facts submitted, the cone of silence provisions do not apply to MPSCC or any of its representatives since MPSCC is not seeking an award of the County RFP under this competitive solicitation. The Interlocal Agreements between the County and Boca Raton, Boynton Beach, and Delray Beach are agreements that are separate and distinct from any agreement made between the County and the respondents to the County RFP.

The Palm Beach County Lobbyist Registration Ordinance prohibits all oral communication between any person seeking the award of a competitive solicitation and any municipal elected officials or their staff or any employee authorized to act on behalf of the county or the municipal governing body.¹ The purpose of the cone of silence is to stop any improper influence of officials and authorized employees by persons seeking awards of competitive solicitations for local government contracts from the time the competitive solicitation is submitted until the contract is awarded.

Here, MPSCC did not submit a proposal for the County RFP. Therefore, since MPSCC is neither a respondent nor a representative of a respondent to the County RFP, the cone of silence does not prohibit MPSCC representatives from speaking with officials and the employees of Boca Raton, Boynton Beach, and Delray Beach. However, since M/A-Com was acquired by Harris Corporation which submitted a proposal for the County RFP, the cone of silence provisions prohibit M/A-Com and their representatives from oral communications concerning the County RFP with County elected officials,

¹ §2-355(d)

their staff, and any County employee authorized to act on behalf of the County, while these provisions remain in force.

FACTS:

Your firm represents the MPSCC. You have advised that MPSCC representatives wish to speak with the officials and the employees of the cities of Boca Raton, Boynton Beach, and Delray Beach to discuss each city rejoining the MPSCC and becoming part of its public radio system.

The MPSCC was created in 1999 by Interlocal Agreement as a cooperative arrangement to improve public safety radio communications in Palm Beach County. Through a competitive solicitation, the MPSCC entered into a contract with M/A-Com for its public safety radio system. M/A-Com was acquired by Harris Corporation in 2009.

In April 2015, the County issued the County RFP, and proposals were submitted by Harris Corporation and Motorola. On September 1, 2015, the Palm Beach County Board of County Commissioners voted to ratify the selection committee's results recommending award of the contract for the County RFP to Motorola and authorized staff to begin negotiations with Motorola. The anticipated signing of the contract between the County and Motorola for the County RFP will be sometime in November 2015, at which point the cone of silence provisions will terminate.

Between December 2014 and April 2015, Palm Beach County entered into Interlocal Agreements with the cities of Boca Raton, Boynton Beach, and Delray Beach. These are separate and distinct agreements which are only related to the County RFP with regards to the usage of the countywide radio system put into place based on the County RFP. Each Interlocal Agreement sets forth the parameters under which the County would prepare the County RFP, including providing each city's design criteria package as an alternate in the County RFP and allowing each city to choose whether to contract with the vendor selected by the County for the design and installation of the city's radio system.

These Interlocal Agreements also require elected officials to comply with the Palm Beach County Lobbyist Registration Ordinance's cone of silence provisions with regards to the respondents of the County RFP. However, because this language is found within the Interlocal Agreements that are separate and distinct from the County RFP, this requirement is not applicable to the Lobbyist Registration Ordinance's cone of silence provisions concerning the County RFP competitive bid process. As contract terms listed in separate documents outside of the four corners of the County RFP, the enforceability of these terms must be determined by a court of law, not by the Palm Beach County Commission on Ethics.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-355 of the Lobbyist Registration Ordinance:

Sec. 2-355. Cone of silence.

- (a) ***Cone of silence*** means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:
 - (1) Any person or person's representative seeking an award from such competitive solicitation;
 - and

- (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.
- (b) For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
- (c) The cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The cone of silence applies to any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.
- (d) The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
- (f) The cone of silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.

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 assumes they are true for purposes of this advisory opinion. This opinion 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
Interim Executive Director

CEK/gal