



Agenda

December 10, 2015 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm. Executive Session from 1:35-2:30pm Regular Agenda will resume at 2:45pm

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

Executive Director
Mark E. Bannon

Intake Manager
Gina A. Levesque

Staff Counsel
Christie E. Kelley

Senior Investigator
(vacant)

Investigator
Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from November 5, 2015
- V. Executive Session
 - a. C15-019
 - b. C15-020
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 15-047
 - b. RQO 15-048
 - c. RQO 15-049
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. 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**

NOVEMBER 5, 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) Interim Executive Director
Anthony C. Bennett, COE Investigator
Wayne Condry, Human Resources (HR) Director
Steven P. Cullen, COE Executive Director
Christie Kelley, COE Staff Counsel
Gina A. Levesque, COE Intake Manager
Leilani Yan, HR Recruitment and Selection Manager

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

Michael Kridel, Commission on Ethics (COE) Chair, announced that today's executive session was postponed.

IV. APPROVAL OF MINUTES FROM SEPTEMBER 16, 2015

MOTION to approve the September 16, 2015, minutes. Motion by Clevis Headley, seconded by Judy Pierman, and carried 5-0.

V. APPROVAL OF MINUTES FROM OCTOBER 1, 2015

MOTION to approve the October 1, 2015, minutes. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 5-0.

VI. EXECUTIVE SESSION – Canceled

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- a. RQO-15-045
- b. RQO 15-046

MOTION to approve the advisory opinions as published. Motion by Vice Chair Headley, seconded by Commissioner Loffredo, and carried 5-0.

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

IX. PROPOSED ADVISORY OPINIONS

- a. RQO 15-044

Mark Bannon, COE Interim Executive Director, stated that:

- The proposed opinion was based on the current Cone of Silence (Cone) section of the Lobbyist Registration Ordinance (Ordinance).
- It was not on the consent agenda because the COE did not regularly deal with the Ordinance.

Christie Kelley, COE Staff Counsel, stated that:

IX. – CONTINUED

- The attorney representing the Municipal Public Safety Communications Consortium of Palm Beach County (MPSC) requested that MPSC members be allowed to speak with officials and employees of the cities of Boca Raton, Boynton Beach, and Delray Beach, to discuss their rejoining the MPSC and becoming part of its public radio system.
- Those cities signed interlocal agreements (agreements) with Palm Beach County concerning the use of a proposed countywide public radio system. The agreements allowed each city to choose whether to use the vendor selected by the County's Request for Proposal (RFP) process.
- The agreements required each city's elected officials to comply with the Ordinance's Cone provisions regarding the respondents' compliance with the County's RFP.
- The County issued an RFP for the countywide public safety radio system. Harris Corporation and Motorola Inc. submitted proposals, and the Consortium did not participate.
 - The board subsequently chose Motorola as the County's vendor, although a contract was not yet awarded.
 - Since the Consortium was neither a respondent nor a representative of the respondent, staff submitted that the Cone did not prohibit Consortium representatives from speaking with the officials of those cities.

Commissioner Shullman commented that the issue remained under the COE's jurisdiction as mentioned in Section 2-355 of the Ordinance.

Mr. Bannon clarified that the cities entering the agreement also agreed to abide by the Cone.

MOTION to approve RQO 15-044 as published. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.

X. EXECUTIVE DIRECTOR UPDATE: APPLICANT SHORT-LIST AND INTERVIEW DATE DISCUSSION (LEILANI YAN)

Chair Kridel asked Leilani Yan, HR Recruitment and Selection Manager, to describe the selection process.

Ms. Yan stated that:

- The Executive Director (ED) position was advertised from September 21, 2015, through October 9, 2015.
 - The HR staff received 42 applications, which were screened for minimum qualifications.
 - The COE commissioners were provided with the resumes for their review, along with professional conduct questionnaires completed by the applicants.
- Those results were combined into the frequency table handed out to COE commissioners. It showed the frequency at which the candidate's name was mentioned, and a summary of frequency levels.
 - Four of the five respondents listed Mr. Bannon in the top group.
 - Six candidates received three nominations, three candidates received two, and seven candidates were mentioned at least once by each panelist.

Chair Kridel stated that the floor was open for discussion. He added that the goal was to identify the viable candidates and proceed to initial interviews. He added that the first to be considered was Mr. Bannon.

Ms. Yan said that the open process allowed Mr. Bannon to remain in chambers during the discussion.

X. – CONTINUED

Wayne Condry, HR Director, stated that any short list would be created in public, and that a separate meeting would be required to announce the five candidates chosen for interviews.

Chair Kridel suggested that a poll be taken today to select five names from the seven to interview.

Commissioner Loffredo stated that:

- Mr. Bannon was a desirable candidate because he was always involved with the criminal justice system as a military policeman, retiring as lieutenant. He held various positions that involved working with people, graduated from Nova University, and earned a law degree from the University of Miami.
- He worked for five years for the COE in an investigative capacity, knew the court system and many court staff members, and could hit the ground running.

Commissioner Pierman stated that nobody possessed as much experience as Mr. Bannon.

Commissioner Headley stated that he agreed with the statements made by Commissioner Loffredo.

Chair Kridel stated that he agreed with Commissioner Shullman's suggestion to place Mr. Bannon in the top group containing four candidates. He added that:

- Candidate Judith Levine possessed a long history in law enforcement, from the Attorney General's Office to the Miami-Dade Police Department as a legal advisor.
- She clearly possessed the legal qualifications, knew how the public sector worked, and she met all the other qualifications.

Commissioner Loffredo stated that Ms. Levine's entire career within the criminal justice system following graduation from the University of Florida Law School made her very qualified.

X. – CONTINUED

Commissioner Shullman commented that:

- Ms. Levine's work with the Broward County Sheriff's Office was very similar to the work she would perform at the COE, since she supervised seven attorneys, ten support staff and the risk management director, and oversaw legal matters, public records, and ethics issues.
- In her current position, she provided legal advice concerning government liability issues and public records.
- She seemed capable of adapting to COE work requirements of interpreting ethics laws and applying them.

Concerning candidate Gary Lippman, Commissioner Loffredo stated that:

- He worked at the Police Benevolent Association (PBA) for 15 years performing work similar to the COE's.
- He was accustomed to both the administrative and criminal sides of criminal justice, and was a good candidate.

Chair Kridel stated that he concurred with Commissioner Loffredo's opinion because the PBA's work was consistent with the COE's.

Commissioner Shullman stated that Mr. Lippman negotiated and defended agreements with the PBA, which showed that he understood COE work, and that he should be invited to an interview.

Chair Kridel stated the following about candidate Tamar Nedzar:

- She was obviously familiar with a substantial amount of ethical issues, considering that she worked for the United States (U.S.) House of Representatives, the U.S. Selection Assistance Commission at various times, and had every opportunity to be exposed to every type of ethical dilemma that could be presented in the public sector.

X. – CONTINUED

- Her focus was consistently on ethical issues as opposed to the other three candidates with criminal justice and law enforcement experience.

Commissioner Headley said that he agreed that Ms. Nedzar's experience with the U.S. House of Representatives Committee on Ethics was crucial to the job.

Commissioner Shullman stated that Ms. Nedzar's experience was the most relevant to COE work. She added that she could bring an outside perspective to the county.

Chair Kridel reminded the group that Inspector General John Carey was also recruited outside the county.

Chair Kridel stated that candidate James Rowlee possessed experience in the public sector from working at the Broward County Attorney's Office for 14 years. He said that Mr. Rowlee's experience was not necessarily on point, but prior to that job he worked for Broward County's court system, and also possessed experience in private practice.

Commissioner Shullman commented that Mr. Rowlee's cover letter mentioned advising Broward County commissioners on their ethical obligations in 2010 during the Code of Ethics adoption. He currently gave ethics guidance to the Broward County Housing and Finance Authority, the Tourist Development Council, and the Health Facilities Authority, she said.

Chair Kridel said that the interview panelists should explore with Mr. Rowlee how much of what he described in his letter related to his other responsibilities and his achievements.

Chair Kridel stated that:

- The next candidate, Stephanie Silver, worked for 15 years at the City of Miami's State Attorney's Office (SAO).
- Ms. Silver's resume listed various initiatives, tasks, and a variety of experience in the criminal justice arena. She demonstrated stability and could make the transition to the quasi law-enforcement COE realm.

X. – CONTINUED

- He believed that 15 years in one position may make the transition challenging.

Commissioner Loffredo commented that Ms. Silver was not as strong as several of the other candidates.

Commissioner Shullman stated that although she may be capable, her resume provided little background beyond her SAO work.

Chair Kridel said that candidate Kimberly Tendrich had experience in the public sector as Public Defender and in human resources. She possessed in-depth experience with many issues that affected many people, as well as administrative law, he said.

Commissioners Loffredo, Headley, and Pierman stated that they concurred with Chair Kridel's opinion.

Commissioner Shullman said that she would be comfortable with Ms. Tendrich assuming the position, given the agencies that she advised, and her many accomplishments that included directing investigations, providing counsel to agency attorneys, and other skills.

Chair Kridel stated that the top seven candidates were discussed and the COE now needed to decide who to actually interview. His poll of each COE commissioner resulted in the following:

CANDIDATE MARK BANNON

- Commissioner Loffredo: Yes.
- Commissioner Headley: Yes.
- Commissioner Pierman: Yes.
- Commissioner Shullman: Yes.

X. – CONTINUED

- Commissioner Kridel: Yes.

Chair Kridel reported five votes for Mr. Bannon.

CANDIDATE JUDITH LEVINE

- Commissioner Shullman: Yes.
- Commissioner Pierman: Yes.
- Commissioner Kridel: Yes
- Commissioner Headley: Yes.
- Commissioner Loffredo: Yes.

Chair Kridel reported five votes for Ms. Levine.

CANDIDATE GARY LIPPMAN

- Commissioner Loffredo: Yes.
- Commissioner Headley: No.
- Commissioner Pierman: Yes.
- Commissioner Shullman: Yes.
- Commissioner Kridel: No.

Chair Kridel reported three votes for Mr. Lippman.

CANDIDATE TAMAR NEDZAR

- Commissioner Shullman: Yes.
- Commissioner Pierman: No.

X. – CONTINUED

- Commissioner Kridel: Yes.
- Commissioner Headley: Yes.
- Commissioner Loffredo: Yes.

Chair Kridel reported four votes for Ms. Nedzar.

CANDIDATE JAMES ROWLEE

- Commissioner Loffredo: Yes.
- Commissioner Headley: No.
- Commissioner Kridel: No.
- Commissioner Pierman: No.
- Commissioner Shullman: Yes.

Chair Kridel reported three votes for Mr. Rowlee.

Wayne Condry, HR Director, stated that a correction in the vote should be made because he heard three “no” votes and two “yes” votes.

Chair Kridel conducted a vote recount for Mr. Rowlee.

CANDIDATE JAMES ROWLEE

- Commissioner Loffredo: Yes.
- Commissioner Headley: No.
- Commissioner Kridel: No.
- Commissioner Pierman: No.

X. – CONTINUED

- Commissioner Shullman: Yes.

Chair Kridel stated that the vote recount showed Mr. Rowlee received two “yes” votes and three “no” votes.

CANDIDATE STEPHANIE SILVER

- Commissioner Shullman: No.
- Commissioner Pierman: No.
- Commissioner Kridel: No.
- Commissioner Headley: No.
- Commissioner Loffredo: No.

Chair Kridel reported five “no” votes for Ms. Silver.

CANDIDATE KIMBERLEY TENDRICH

- Commissioner Loffredo: No.
- Commissioner Headley: Yes.
- Commissioner Kridel: Yes.
- Commissioner Pierman: Yes.
- Commissioner Shullman: Yes.

Chair Kridel recapped the vote totals, saying that:

- Mr. Bannon received five positive votes.

X. – CONTINUED

- Ms. Levine received five votes.
- Mr. Lippman received three votes.
- Ms. Nedzar received four votes.
- Mr. Rowlee received two votes.
- Ms. Silver received no votes.
- Ms. Tendrich received four votes.
- The top four candidates were: Mr. Bannon, Ms. Levine, Ms. Nedzar, and Ms. Tendrich.

Chair Kridel asked COE members whether any of the three remaining candidates resonated loudly enough that it would be erroneous or an oversight not to give any of the three an opportunity for a personal interview.

Commissioner Loffredo commented that Mr. Lippman spent 15 years with the PBA and earned a Master's degree from Cornell University.

Chair Kridel said that there was no question that Mr. Lippman was a qualified candidate for the position, but the COE should decide whether he should be included.

Commissioner Shullman said that she would like to interview him because of his experience with official misconduct investigations. She added that the COE originally planned to interview five candidates.

Commissioner Loffredo stated that he was content with four candidates.

Commissioner Headley stated that at the outset, the COE members agreed to identify five candidates and that Chair Kridel spoke strongly in favor of Mr. Lippman. He suggested that the group consider adding Mr. Lippman to the list.

Chair Kridel stated that he was not bound by what the COE started out to do in terms of candidate numbers. He said that Commissioner Loffredo made strong points regarding Mr. Lippman's experience and applicability to job requirements.

X. – CONTINUED

Commissioner Pierman stated that she was satisfied with five candidates.

Commissioner Shullman agreed to interview five candidates.

Ms. Yan stated that the candidate selection was completed. The next step was to discuss tentative interview dates, she said.

Chair Kridel suggested that this be achieved offline, and that the COE be advised of the schedule. He suggested that dates be chosen as soon as possible out of respect to the candidates themselves and secondarily to individual commissioners' schedules.

Ms. Yan said that another process that could be done offline was the development of interview questions, procedures and protocols associated with that. She said that she could send examples to the commissioners and wait to get their feedback.

Chair Kridel said that procedures followed during former COE Executive Director Steve Cullen's selection were a good place to start.

XI. INTERIM EXECUTIVE DIRECTOR COMMENTS

Mr. Bannon stated that:

- He appreciated the opportunity to serve as the COE's Interim Executive Director.
- He and Ms. Kelley completed municipal training sessions, and they both attended the Ethics Partnership Council at Palm Beach State College in preparation for Ethics Awareness Month in March 2016.
- Intake Manager Gina Levesque and Ms. Kelley planned to attend the Southeast Regional Ethics Poll at St. Petersburg College. On November 19, 2015, he would join the Lee County Charter Committee in Fort Myers, Florida to discuss five amendments to consider for 2016.
- He gave a presentation to the Federation of Boca Raton Homeowners Associations (HOA), which is the federation of all HOAs in that city.

X. – CONTINUED

- Ms. Levesque was chosen to join the Palm Beach County All-Hazards Incident Management Team. She would attend two separate training sessions to learn community hurricane preparedness.

XII. COMMISSION COMMENTS

Chair Kridel thanked the COE commissioners for helping to move along a challenging task of choosing candidates. He said he especially appreciated the opportunities to advocate for a good candidate.

Commissioner Pierman said that she thanked the HR staff for being very helpful.

XIII. PUBLIC COMMENTS

XIV. ADJOURNMENT

At 2:27 p.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

December 1, 2015

Mr. Joseph Hughes
11761 153rd CR N
Jupiter, FL 33478

Re: RQO 15-047
Jurisdiction of the COE

Dear Mr. Hughes,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. It has been determined by COE staff that the COE does not have jurisdiction to render an opinion to you on the conflict of interest issue as submitted. However, this opinion will instead address the COE's jurisdiction to render advisory opinions. The opinion rendered is as follows:

QUESTION:

You asked the COE, does a conflict of interest arise for you under the Palm Beach County Code of Ethics (Code of Ethics) when you own both a private building code inspection company and a general contracting company in the Town of Palm Beach (Town), if the inspection company does not inspect any of the properties that used your general contracting company to complete the applicable work?

In the alternative, COE staff submits the following question. Does a person serving as a "resident inspector" for the Town of Palm Beach fall within the jurisdiction of the Code of Ethics?

ANSWER:

The COE has jurisdiction over all Palm Beach County and municipal employees, elected officials, and appointed officials. Your position as a "resident inspector" approved by the Town of Palm Beach does not automatically place you under the jurisdiction of the Code of Ethics. Although you fulfill a government function in this role, that fact is only half of the necessary analysis to make this determination. Since you are paid by private individuals rather than by the Town for this service, you may not fit the definition of "official or employee" found in the Code of Ethics, even though that definition includes "contract personnel and contract administrators performing a government function."¹

¹ §2-442, Definitions.

The Historic 1916 Palm Beach County Courthouse

300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401 561.355.1915 FAX: 561.355.1904

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The COE has previously held that volunteers are within the definition of employee if they have the ability to exercise discretionary power as a government functionary.² However, volunteers who do not have authority to exercise discretionary power or act in an official capacity are not considered county or municipal employees within the meaning of the Code of Ethics.³ Based on the information provided, as a resident inspector hired by private developers, you must keep a daily log of inspections, document compliance with the Town of Palm Beach's building codes, and submit weekly progress reports to the Town's building official, who completes a final inspection of the work. You also report to an assigned Town building inspector who spot-checks your work. Since both the Town building official and the assigned Town building inspector review your work, you do not have the ability to exercise discretionary power. Therefore, you are not an "official or employee" under the Code of Ethics.

Thus, regardless of whether you are required by the Town of Palm Beach to abide by the Code of Ethics, because you are not a Palm Beach County or municipal employee, elected official, or appointed official, and do not fall within the definition of "official or employee" found in §2-442 of the Code of Ethics that includes "contract personnel and contract administrators performing a government function," you are not under the jurisdiction of the COE. The 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 of Ethics.⁴ Therefore, the COE cannot render an advisory opinion to you in this matter, or comment on any potential conflicts of interest between your private building code inspection company and your general contracting company in the Town of Palm Beach.

FACTS:

The facts as you related them to COE staff are as follows. You own two businesses in the Town of Palm Beach. You have owned a general contracting business since 1991, and you have owned and operated a private building code inspection company, which provides the services of all building code inspections, since 1998. Your inspection company can be hired by a property owner or a developer or contractor on the owner's behalf to expedite the progress of projects.

The Town of Palm Beach's Buildings and Building Regulations Ordinance allows private developers to use approved private inspection services as resident inspectors. Under the ordinance, the resident inspector must keep a daily log of inspections, document compliance with the Town of Palm Beach's building codes, and submit weekly progress reports to the Town's building official. The resident inspector is spot checked by an assigned town building inspector and reports to that inspector. The Town's Building Official completes a final inspection of the work, and if appropriate, issues a Certificate of Completion or Certificate of Occupancy as applicable for the project.

A new section of the Town of Palm Beach Code is being considered by the Town Council. One of the proposed sections states that an individual working as a resident inspector in Town cannot also work as a contractor in Town. You understand that the Town of Palm Beach has the authority to pass any ordinance which they choose.

² RQO 12-046

³ Id.

⁴ COE Rule of Procedure 2.2

You believe that acting as a resident inspector is a quasi-governmental function because you perform the work the Town's building department would normally perform and report your inspections to that department. Therefore, you wanted to know if any conflict of interest exists under the Code of Ethics between your inspection company and your general contracting company when the inspection company does not inspect any of your general contracting work.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442 of the Code and Palm Beach County Commission on Ethics Rule of Procedure 2.2:

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function, and chief executive officer who is not part of the local governing body. The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

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.

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. 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



Palm Beach County Commission on Ethics

Commissioners

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

Interim Executive Director
Mark E. Bannon

December 1, 2015

Ms. Denise Bennette, Senior Manager
PBC Information Systems Services
301 North Olive Ave
West Palm Beach, FL 33401

Re: RQO 15-048
Travel Expenses

Dear Ms. Bennette,

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 an employee of Palm Beach County's Information Systems Services (ISS) Department from accepting payment of registration fees for a specialized training program from Palm Beach County Law Enforcement eXchange, Inc. (LEX)?

ANSWER:

Under the facts submitted, the ISS employee is not prohibited from accepting the registration fees from LEX for the training since LEX is not a vendor, bidder, service provider, contractor, or proposer of Palm Beach County. In addition, since the registration fee for the training is an exception to the definition of a gift, the ISS employee who attends the conference is not required to report the cost of the registration to the COE.

The Palm Beach County Code of Ethics (Code) prohibits a public employee from accepting payment or reimbursement of any travel expenses, including registration fees, from any contractor, vendor, service provider, bidder, or proposer doing business with the employee's public employer.¹ Further, the Code defines a "gift" as the transfer of anything of economic value without adequate and lawful consideration.² Under the Code, public employees who are not state-reporting individuals must file an annual gift form with the COE listing any gifts received worth over \$100.³ However, the Code excludes registration fees and other costs associated with an educational seminar from the definition of a gift as long as the attendance is for a government purpose and is related to the public employee's duties and responsibilities.⁴ Here, the ISS employee will be receiving specialized technical training that is pertinent to the employee's duties and responsibilities.

¹ §2-443(f)

² §2-444(g)

³ §2-444(f)(2)

⁴ §2-444(g)(1)h.

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Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com

Website: www.palmbeachcountyethics.com

FACTS:

You are the senior manager of Application Services for Palm Beach County's ISS Department. LEX is a partner agency of ISS. LEX is a 501(c)(3) non-profit organization consisting of law enforcement agencies within Palm Beach County. LEX is not a vendor, bidder, service provider, contractor, or proposer of Palm Beach County. The Palm Beach County Board of County Commissioners contributes funding, and ISS staff positions to augment the LEX program budget. Through its partnership with LEX, ISS develops, maintains, and supports the software applications and infrastructure for the LEX organization. In continuation of this support, ISS will be sending a staff member for specialized technical training. The LEX organization has offered to pay the registration cost for this training. The estimated cost of the registration is \$1,600. The remainder of the travel expenses will be paid by ISS.

LEGAL BASIS:

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

Sec. 2-443. Prohibited conduct.

- (f) ***Accepting travel expenses.*** No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

Sec. 2-444. Gift law.

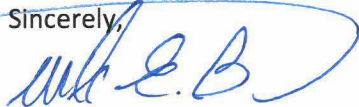
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (2) ***All other officials and employees who are not reporting individuals under state law.***
- b. ***All other gifts.*** All officials 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. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.
- (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.

- (1) Exceptions. The provisions of subsection (g) shall not apply to:
- h. Registration fees and other related costs associated with educational or governmental conferences, meetings or seminars and travel expenses either properly waived or inapplicable pursuant to section 2-443(f), provided that attendance is for governmental purposes, and attendance is related to their duties and responsibilities as an official or employee of the county or municipality;

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,

A handwritten signature in blue ink, appearing to read "Mark E. Bannon", enclosed within a blue oval scribble.

Mark E. Bannon
Interim Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
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Executive Director

Mark E. Bannon

December 7, 2015

Captain Joseph Nelson, Special Operations
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411-3815

Re: RQO 15-049
Misuse of public office or employment

Dear Captain Nelson,

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 employees of Palm Beach County Fire Rescue (PBFR) as an emergency medical services professional (EMS professional), from participating in a referral program with the private personal emergency response service "Life Alert" by personally referring people who can potentially benefit from monitoring services offered by Life Alert, and receiving a monetary fee for each person who enters into an agreement with Life Alert for this paid service? You also asked if this program was "legal" for participation by PBFR employees.

ANSWER:

The answer to whether PBFR employees (or other publicly employed EMS professionals under the Code), may participate in the Life Alert referral program in return for monetary fees is a qualified "yes." EMS professionals employed by PBFR, as well as EMS professionals employed by local municipalities, are not prohibited from participating in the Life Alert referral program and receiving monetary fees from Life Alert for such referrals, as long as they do not use their public employment to assist them in any manner while participating in this referral program, including suggesting such services to a patient, family member or caregiver of a patient, and so long as they strictly adhere to the narrow circumstances listed in this opinion.

Based on the facts submitted and additional research by CEO staff concerning the parameters of the Life Alert referral program, since employment as an EMS provider with a public agency is not required to receive the referral fee, and there are many "EMS professionals" who work for private emergency

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medical service providers, the COE does not believe participation in this program by PBFR or municipal EMS professionals is a per se violation of the Code's prohibition against the use of public employment for personal gain.¹ As long as the public employees' evaluation of potential suitability for this service is based on their knowledge and experience in the emergency medical field, and the contact with, or personal knowledge of a potential Life Alert referral customer is not obtained through employment with PBFR or a local municipality (i.e., where it is based solely on contact with a potential referral customer due to some outside social or other relationship), they may participate in the program.

However, the Code would prohibit both PBFR and municipal employees who are EMS professionals from participating in the referral program, if the employee uses his or her public employment to obtain and use information about potential referral customers, or to solicit potential customers for Life Alert. This would include any information concerning potential Life Alert customers obtained through employment with a local public agency, regardless of whether or not the information is obtained, or the solicitation made, during on-duty or off-duty hours. This prohibition would also include any solicitation made on or off duty while in uniform, or while displaying any badge, insignia or emblem that identifies them as a publicly employed EMS professional. Also, the Code would prohibit an employee from discussing his or her public employment with potential Life Alert customers, or with the family or caregivers of such potential customers, when done to substantiate the public employees professional experience, and would include any written or verbal communication using the professional title of the employee (i.e., paramedic, firefighter, etc.) to attempt to obtain a referral customer.

Finally, the COE cannot advise you as to whether this referral program may violate state or local law, or any County or PBFR rule or policy. This portion of your inquiry should be submitted to the County Attorney and PBFR Executive Staff for their evaluation of those specific issues.

FACTS:

You are a PBFR Captain serving in the Special Operations Group. You advised COE staff that you had been made aware of a "referral program" offered to emergency medical professionals by Life Alert, a private company offering personal emergency response services for a fee. According to their website (www.lifealerthelp.com), this company offers various services to customers, including a "medical alert system designed to protect seniors and all family members in a home health emergency." Life Alert has instituted a "new referral program specifically designed for Paramedics, where you can make \$250 dollars for every new subscriber referral."² Under this program, emergency health professionals, and in particular paramedics, would receive a payment of \$250 for any person they refer to Life Alert, if that person enters into a monitoring agreement with Life Alert. On the emergency medical professional referral website page, the company states, "Be sure that this referral program is not in violation with the codes of your profession."³ After reviewing this information, you became concerned that participation in this referral program by PBFR employees may violate the Code of Ethics, or may be in violation of

¹ An "EMS professional" in this instance would include paramedics, firefighters, dispatchers and other staff who are directly involved in providing these services to the community, if employed by the County, or any Palm Beach County municipality. But the Code's prohibition against using information obtained through public employment for personal gain applies to every County or municipal official or employee.

² Life Alert website, (www.lifealert.com).

³ Life Alert website, (www.referral.lifealert.com).

other law. Based on this concern, you asked the COE to advise you so that you could counsel other PBFR employees about potential issues concerning their participation in this program.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a)(1 and 4) 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;

As employees of PBFR and Palm Beach County, you are aware that you and other PBFR employees are within the jurisdiction of the PBC Commission on Ethics, and must abide by the PBC Code of Ethics. Code Section 2-443(a), *Misuse of public office or employment*, prohibits a public official or employee from using his or her official position in a manner that he or she knows, or should know with the exercise of reasonable care, will result in a special financial benefit for themselves, or other specifically delineated persons or entities listed. Under §2-443(a), the obtaining and/or using personal information made available because of County or municipal employment as an EMS professional in a manner outside of the relevant purpose for obtaining such personal information (i.e., the safety and health of the patient), is prohibited if done for personal financial gain.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted, and those discovered by COE staff research. The COE generally does not investigate the facts and circumstances submitted, but assume they are true for purposes of an advisory opinion. This opinion is not applicable to any conflict under state law, and 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

MEB/gal