

Agenda

February 3, 2016 – 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

Chief Investigator

Anthony C. Bennett

Investigator

Vacant

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from December 10, 2015
- V. Executive Session (C15-011)
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 15-051
 - b. RQO 16-001
 - c. RQO 16-002
 - d. RQO 16-003
- 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**

DECEMBER 10, 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) Executive Director
Anthony C. Bennett, COE Senior Investigator I
Christie E. Kelley, COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

Chair Michael Kridel stated that today was Mark Bannon's first meeting as COE Executive Director.

IV. APPROVAL OF MINUTES FROM NOVEMBER 5, 2015

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

RECESS

At 1:34 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 2:55 p.m., the meeting reconvened with Chair Kridel, Vice Chair Headley, Commissioner Loffredo, Commissioner Pierman, and Commissioner Shullman present.

V. EXECUTIVE SESSION

V.A. C15-019

Vice Chair Clevis Headley read the following Public Report and Final Order of Dismissal that was discussed during the executive session:

Complainant, Judy Davis, filed the above referenced complaint on July 13, 2015, alleging that Respondent, Regina Williams, Legislative Aide to City of Riviera Beach Commissioner Terence Davis, violated Section 2-443(a) and Section 2-433(b) of the Palm Beach County Code of Ethics.

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 December 10, 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:

V.A. – CONTINUED

ORDERED AND ADJUDGED that the complaint against Respondent Regina Williams, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on December 10, 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.)

V.B. C15-020

Vice Chair Headley read the following Public Report and Final Order of Dismissal that was discussed during the executive session:

Complainant, Judy Davis, filed the above referenced complaint on July 13, 2015, alleging that Respondent, Terence Davis, City of Riviera Beach Commissioner, violated Section 2-443(a) and Section 2-433(b) of the Palm Beach County Code of Ethics.

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 December 10, 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, Terence Davis, is hereby DISMISSED.

V.B. – CONTINUED

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public discussion on December 10, 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.)

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- a. Request for Opinion (RQO) 15-047**
- b. Request for Opinion (RQO) 15-048**
- c. Request for Opinion (RQO) 15-049**

Commissioner Sarah Shullman stated that she had a question concerning advisory opinion 15-049 relating to County Fire Rescue.

Gina Levesque, COE Intake Manager, said that whenever a specific RQO needed discussion, it should be removed from the consent agenda and discussed separately.

MOTION to accept RQO 15-047 and RQO 15-048 as published. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 5-0.

VII. ITEM PULLED FROM CONSENT AGENDA

VII.A. RQO 15-049

Commissioner Shullman questioned the purpose of the Life Alert referral program services discussed in the advisory opinion, since conditions were placed on them.

Mark Bannon, COE Executive Director, stated that:

- It was feasible that trained paramedics could know a friend or a family member who would benefit from such services.

VII.A. – CONTINUED

- That service could be offered, and if Life Alert wanted to pay, it would not be a violation.
- Probably 99% of the referrals would not be accomplished because they would involve some other employment, which was not permitted.

MOTION to accept RQO 15-049 as published. Motion by Sarah Shullman, seconded by Clevis Headley, and carried 5-0.

VIII. EXECUTIVE DIRECTOR COMMENTS

Mr. Bannon stated that:

- He wished to thank the commissioners for their confidence in him.
- He and Staff Counsel Christie Kelley attended a Council of Governmental Ethics Laws conference in Boston.
 - They met the new ethics board officer for the City of Tallahassee.
 - They learned that the general rule as applied to what was or was not a public purpose was that elected officials determined what they believed to be a public purpose, even when it may yield some private payment to them.

IX. COMMISSION COMMENTS

DISCUSSED: Congratulations.

Commissioner Judy Pierman extended congratulations to Mr. Bannon in his new position.

X. PUBLIC COMMENTS – None

XI. ADJOURNMENT

At 3:06 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

Executive Director

Mark E. Bannon

January 11, 2016

Mr. Km! Ra, Purchasing and Contracts Director
City of Palm Beach Gardens
10500 N. Military Trail
Palm Beach Gardens, FL 33410

Re: RQO 15-051
Gift law

Dear Mr. Ra,

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:

Under the Palm Beach County Code of Ethics (Code), may the clerks of the 38 municipalities within Palm Beach County, who are under the jurisdiction of the COE, participate in the Florida Association of City Clerks (FACC) Summer Academy's 50/50 raffle by buying or selling raffle tickets?

ANSWER:

Based on the facts submitted, the clerks of the 38 municipalities within Palm Beach County may participate in FACC's 50/50 raffle by purchasing raffle tickets since FACC is not a vendor or a lobbyist of any of the municipalities within Palm Beach County; however, caution must be taken if the clerks sell any raffle tickets to vendors, lobbyists, or principals of lobbyists of their respective municipalities.

Under the Code, municipal clerks are not prohibited from accepting a raffle prize from persons or organizations that are not municipal vendors, lobbyists, or principals, as long as there is no quid pro quo or other special consideration given to the donor, and the gift is not given for the past, present, or future performance or non-performance of a legal duty or official action.¹ Based on the information provided, since FACC is not a vendor, lobbyist, or principal or employer of a lobbyist of any of the 38 municipalities within Palm Beach County, any of the municipal clerks from Palm Beach County may accept the raffle prize. If the raffle prize is valued at over \$100, the clerk may be required to report it under state law. Because municipal clerks are state reporting individuals, state law controls the gift reporting requirements for state reporting individuals. Under the Code, if a municipal clerk is required to file a State of Florida Quarterly Gift Disclosure Form (Form 9) with the state, the clerk must also file a copy of the Form 9 contemporaneously with the COE.²

¹§2-444(e)

² §2-444(f)(1)

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

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

Website: www.palmbeachcountyethics.com

Although the clerks may accept the raffle prize, they must use caution if they participate in the sale of raffle tickets. Under the Code, municipal clerks are prohibited from accepting, directly or indirectly, a gift from any vendor, lobbyist, or principal of a lobbyist of their respective municipal employers if the value of the gift exceeds \$100 annually in the aggregate.³ Therefore, if any vendor, lobbyist, or principal of a lobbyist of a clerk's municipal employer purchases tickets for the raffle from that clerk, the clerk would be prohibited from selling over \$100 in raffle tickets to the vendor or lobbyist as it would be considered accepting an indirect gift from the prohibited source, even where the funds eventually are given to the FACC. Indirect gifts of this nature are sometimes referred to as "pass-through" gifts. Further, while the Code would allow the vendors or lobbyists to be solicited for funds of any amount on behalf of a 501(c)(3) non-profit charity, that exception does not apply here since FACC is a non-profit business association, not a 501(c)(3).⁴

FACTS:

You are the Purchasing and Contracts Director for the City of Palm Beach Gardens. Patty Snider, the City Clerk for Palm Beach Gardens, is a FACC member and the 2015-2016 FACC Summer Academy Committee Chair. The FACC is a non-profit professional association comprised of more than 500 municipal clerks representing Florida's cities, towns, villages and special districts. FACC aims to increase the efficiency of city clerks' functions, to assist all city administrators in creating greater educational standards for city clerks, to gather and disseminate information to improve procedures and the efficiency of the administration of municipal government, and to discuss problems of mutual concerns. FACC is neither a vendor nor a lobbyist of any of the 38 municipalities within Palm Beach County.

The 2016 Summer Academy will be held at PGA National Resort and Spa in Palm Beach Gardens. During the event, the association plans to hold a 50/50 drawing. A 50/50 drawing is a fundraising raffle where the gross proceeds of the 50/50 tickets sold during the summer academy go into a prize pool. Fifty percent of the prize pool will go to the winner of a random draw; the remaining 50% will be set aside for the FACC's general fund. The municipal clerks attending the event must purchase raffle tickets to participate. The raffle is cash only, so no Palm Beach County businesses or vendors will be solicited to donate prizes for the raffle, although any person attending the event may purchase tickets.

LEGAL BASIS:

The legal basis for this opinion is found in §2-444 of the Code:

Sec. 2-444. Gift law.

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

- (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;

³ §2-444(a)(1)

⁴ §2-444(h)

- (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.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.
- (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.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assume they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Mark E. Bannon

January 25, 2016

Mr. Damir Kukec, Research and Planning Manager
Criminal Justice Commission
301 N. Olive Ave
West Palm Beach, FL 33401

Re: RQO 16-001
Outside Employment

Dear Mr. Kukec,

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 providing business analytics, research, and evaluation services on your own time to non-profit organizations, small businesses, and municipal governments when you are a Palm Beach County employee?

ANSWER:

Based on the facts submitted, the Code of Ethics does not prohibit you from providing business analytics, research, and evaluation services on your own time through your outside business to non-profit organizations, small businesses, and municipal governments. The Code prohibits you or your outside business from entering into any contract or other transaction to provide goods or services to your public employer.¹ Here, you are not proposing to "enter into any contract or other transaction for goods or services" with your employer, Palm Beach County. Because you would provide services through your outside business only to non-profit organizations, small businesses, and other local or municipal government entities, this would not be "prohibited conduct" under Sec. 2-443(d) of the Code.

However, you are prohibited from entering into any contractual relationships with a vendor of Palm Beach County if you would be providing good and services to your public employer through that contract. This would create an indirect contract with the county and violate Sec. 2-443(d) of the Code.²

You will also have an ongoing responsibility to refrain from using your official position as a county employee to obtain a financial benefit for yourself, your outside business, or a customer or client of your outside business. The Code prohibits public employees from using their official positions with the county in a manner that they know, or should know with the exercise of reasonable care, will result in a special financial benefit for themselves or other specified persons or entities, including their outside businesses.³ Therefore, you are prohibited from soliciting business during your County work hours and from identifying yourself as a county employee, including providing any written or verbal communication using your county title or position, to attempt to obtain a customer.

¹ §2-443(d)

² RQO 10-038

³ §2-443(a)

FACTS:

You are a full-time Palm Beach County employee serving as the Research and Planning Manager for the Palm Beach County Criminal Justice Commission.

You are considering establishing your own consulting company that would provide business analytics, research and evaluation services to not-for-profits, small businesses, as well as, government agencies/departments. You have been approached informally by local not-for-profits and municipal governments to provide such services; however, before engaging in a contract with these entities, you want to ensure that you are complying with all of the Palm Beach County Code of Ethics requirements. Your outside business will not enter into any contracts with the County.

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.

- (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, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official's or employee's outside employer or business;

- (d) *Contractual relationships.* No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assume they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Mark E. Bannon

January 27, 2016

Mr. Claudio Riedi, Shareholder
Lehtinen Schultz Riedi Catalano de la Fuente PLLC
Sabadell Financial Center
1111 Brickell Avenue, Suite 2200
Miami, FL 33131

Re: RQO 16-002
Conflict of Interest/Contingency Fee

Dear Mr. Riedi,

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 a city commissioner, in his or her personal capacity, from selecting your law firm to represent him or her in an employment discrimination matter, when your law firm serves as special litigation counsel for that city?

ANSWER:

The Code prohibits a public official from using his or her official position or office in any manner to give a special financial benefit, not shared with similarly situated members of the general public, to himself or herself or to corruptly secure any special benefit for himself or herself.¹ The Code also prohibits any official action or "quid pro quo" on the part of the city commissioner in exchange for your law firm's services in the employment discrimination matter.² Based on the facts provided, the city commissioner would not receive any special benefit, financial or non-financial, from your law firm's representation since your law firm will be representing the city commissioner on a standard contingency fee basis, with the fee set at the highest percentage specified as reasonable by the Florida Bar rules. Further, your law firm is not prohibited from providing personal legal services to the city commissioner on a contingency fee basis. Although the Code prohibits contingency fees, this prohibition does not apply to attorneys representing clients in judicial proceedings.³

Thus, the city commissioner is not prohibited from selecting your law firm to represent him or her in an employment discrimination matter, when your law firm serves as special litigation counsel for that city as long as the city commissioner pays the same cost and fees for the representation as any other customer.

¹ §2-443(a); §2-443(b)

² §2-444(e)

³ §2-443(g)

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

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

Website: www.palmbeachcountyethics.com

FACTS:

Your law firm is special litigation counsel for a city in Palm Beach County with respect to land use and municipal litigation. One of the city commissioners has asked your law firm to consider representing her or him in an entirely unrelated contingency fee case arising from employment discrimination by a former employer in the past.

The potential defendant is completely unrelated to the city and has never conducted any business with the city and does not do so now. The potential defendant is headquartered in another state. The issues in the prospective individual representation are completely unrelated to issues you represent the city in, and there is no overlap with parties, evidence, or interests between any of the parties.

The city commissioner would be represented on a contingency fee basis, with the fee set at the highest percentage specified as reasonable by the Florida Bar rules. If no recovery is made, the commissioner is not required to pay fees or costs, as is customary in contingency fee cases. If a recovery should occur, the stated contingency percentage and costs are taken from the recovery.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a), §2-443(b), §2-443(g), and §2-444(e) of the Code:
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;
- (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.
- (g) ***Contingent fee prohibition.*** No person shall, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person shall, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: an ordinance, resolution, action or decision of the board of county commissioners or local municipal governing body as applicable, any employee authorized to act on behalf of the board of county commissioners or local municipal governing body as applicable, the county administrator or municipal administrator as applicable, or any action or decision of an advisory board or committee. This prohibition does not apply to real estate brokers when acting in the course of their profession as regulated by Florida Statutes, §§475.001—475.5018, as may be amended. Nothing in this section may be construed to prohibit any salesperson from engaging in legitimate government business on behalf of a company from receiving compensation or commission as part of a bona fide contractual arrangement with that company provided such compensation or commission is ordinary and customary in the industry. *Nothing in this section may*

be construed to prohibit an attorney from representing a client in a judicial proceeding or formal administrative hearing pursuant to a contingent fee arrangement. (emphasis added)

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.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assume they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Mark E. Bannon

January 28, 2016

Ms. Laura Simon
Executive Director
Delray Beach Downtown Development Authority
85 SE 4th Avenue, Suite #108
Delray Beach, FL 33483

Re: RQO 16-003
Conflict of Interest

Dear Ms. Simon,

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 a Delray Beach Downtown Development Authority (DDA) board member from voting on and discussing any matters, including the DDA budget, which concern an organization of which he is an officer or director (Pine Grove Arts District) and an organization which is a customer or client of his outside business (Delray Beach Marketing Cooperative)?

ANSWER:

The Code specifically prohibits an official from using his position to give a special financial benefit, not shared with similarly situated members of the general public, to a not-for-profit organization of which he is an officer or director or to a customer or client of his outside business or employer.¹ By prohibiting officials and employees from using their public office to give a special financial benefit to a particular non-profit organization of which they are an officer or director, the Code attempts to limit potential misuse of the official's public duty to treat all citizens and entities equally. Here, the DDA board member's position on the board of the Pineapple Grove Arts District would be in direct conflict with the misuse of public office provision if he uses his official position to assist Pineapple Grove Arts District in obtaining a special financial benefit. Examples of such misuse would include any discussion at a public meeting or any vote by him as a DDA board member on matters that provide a financial benefit to the Pineapple Grove Arts District. Similarly, since the Delray Beach Marketing Cooperative is a customer or client of the DDA board member's outside business, a prohibited conflict of interest would arise for him if he uses his official position to give a special financial benefit to the Delray Beach Marketing Cooperative in this same manner.

¹ §2-443(a)

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

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

Website: www.palmbeachcountyethics.com

Because of these conflicts, the DDA board member must abstain from voting on and not participate in any matter that will result in a special financial benefit to Pineapple Grove Arts District or to the Delray Beach Marketing Cooperative. According to the facts submitted, the DDA board will discuss the budget line by line, including the funding for the Pineapple Grove Arts District and the Delray Beach Marketing Cooperative, and the board will then vote on the entire budget as one item. Based on those facts, the Code does not prohibit the DDA board member from voting on the budget as a whole. However, when the DDA board discusses the budget line by line, the DDA board member must not participate in the discussions or vote on any "line-by-line" budget issue concerning Pineapple Grove Arts District or the Delray Beach Marketing Cooperative since the funding would be a financial benefit to those two entities. In order to comply with the Code, the DDA board member must publicly disclose the nature of the conflict before the DDA board discusses the issue and not participate in discussions. If any "line-by-line" vote takes place while reviewing the budget, the DDA board member must also abstain from voting and on the matters concerning Pineapple Grove Arts District or the Delray Beach Marketing Cooperative and file a state voting conflict form (8B) with the clerk of the DDA board and submit a copy to the COE.²

FACTS:

You are the Executive Director of the Delray Beach Downtown Development Authority (DDA). The DDA is a dependent special district of the City of Delray Beach. It is responsible for the economic development and improvement of the downtown area of Delray Beach. The DDA is under the jurisdiction of the COE as a result of a Memorandum of Understanding between the COE and the DDA.

The DDA's main budget includes grants and funding for certain areas and projects in the Downtown District, such as the Delray Beach Marketing Cooperative, Pineapple Grove Arts District, and West Atlantic Redevelopment Coalition. When the board reviews the budget, they discuss the budget line by line and then vote on the entire budget as one item.

One of the board members of the DDA sits on the board of the Pineapple Grove Arts District, which has a line item grant in the DDA budget. The board member generally gives a report at the monthly DDA board meeting concerning the Pineapple Grove Arts District. This same board member owns an IT company which has a contract with the Delray Beach Marketing Cooperative. The Delray Beach Marketing Cooperative receives a large grant from the DDA that supports the downtown Christmas tree. It is your understanding that the Delray Beach Marketing Cooperative meets the Code's definition of a customer or client of the board member's IT company.

LEGAL BASIS:

The legal basis for this opinion is found, in relevant part, in §2-442, §2-443(a) and §2-443(c) of the Code:

Sec. 2-442. Definitions.

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

Outside employer or business includes:

- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest.

² 2-443(c)

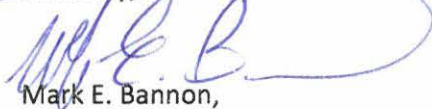
Sec. 2-443. Prohibited conduct.

- (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:
- (5) A customer or client of the official's or employee's outside employer or business;
 - (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.
- (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. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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, as set forth in subsections (a)(1) through (7).

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. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal