

Agenda

April 7, 2016 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session from 1:45-3:30pm
Regular Agenda will resume at 3:30pm

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@palmbeachcountyyethics.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 and Compliance Manager

Gina A. Levesque

General Counsel

Christie E. Kelley

Chief Investigator

Anthony C. Bennett

Investigator

Abigail Irizarry

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from February 3, 2016
- V. Approval of Minutes from March 3, 2016
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 16-005
 - b. RQO 16-006
 - c. RQO 16-007
 - d. RQO 16-008
 - e. RQO 16-009
 - f. RQO 16-010
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Executive Session
 - a. C15-012
 - b. C15-021
- IX. Publication of Finding C15-012
- X. Publication of Finding C15-021
- XI. 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**

FEBRUARY 3, 2016

**WEDNESDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair – Absent
Clevis Headley, Vice Chair – Absent
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

Mark Bannon, COE Executive Director, stated that Commissioner Michael Loffredo was acting chair and that a quorum of three was present.

Mr. Bannon requested that cellphones be silenced.

IV. APPROVAL OF MINUTES FROM DECEMBER 10, 2015

MOTION to approve the December 10, 2015, minutes as presented. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 3-0. Clevis Headley, and Michael Kridel absent.

RECESS

At 1:35 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 3:30 p.m., the meeting reconvened with Chair Loffredo, Commissioner Pierman, and Commissioner Shullman present. Clevis Headley, and Michael Kridel absent.

V. EXECUTIVE SESSION

V.A. C15-011

Commissioner Judy Pierman read the following Public Report and Final Order of Dismissal that was discussed during the executive session:

Complainant, Steven P. Cullen, former Executive Director, Palm Beach County Commission on Ethics (COE), filed the above-referenced complaint on April 16, 2015, alleging that Respondent, Angeleta Gray, former City of Delray Beach Councilwoman, violated Section 2-444(a)(1) of the Palm Beach County Code of Ethics by accepting a gift valued at more than \$100 from a person or entity who is a vendor of the City of Delray Beach and violated Section 2-444(f)(1) by failing to file a copy of her required State of Florida Quarterly Gift Disclosure Form with the COE.

Pursuant to Section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On February 3, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, Report of Investigation, the Affidavit from COE investigative staff, and the Probable Cause Recommendation submitted by the COE Advocate.

V.A. – CONTINUED

After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe a violation occurred as to Count 1 for violation of Section 2-444(a)(1) Gift Law.

Pursuant to Sec. 2-260.3(a) of the Palm Beach County Commission on Ethics Ordinance (Dismissal of Complaints), the alleged violation of Section 2-444(f)(1), Gift reports for officials and employees identified by state law as reporting individuals, is dismissed.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent Angeleta Gray, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on February 3, 2016.

By: Michael F. Loffredo, Acting 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) 15-051**
- b. Request for Opinion (RQO) 16-001**
- c. Request for Opinion (RQO) 16-002**
- d. Request for Opinion (RQO) 16-003**

MOTION to accept RQO 15-051, RQO 16-001, RQO 16-002, and RQO 16-003 as published. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 3-0. Clevis Headley, and Michael Kridel absent.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. EXECUTIVE DIRECTOR COMMENTS

Mr. Bannon stated that:

- The Palm Beach County Bar Association approved Commissioner Sarah Shullman's appointment extension to a full four-year term. Swearing in was set for March 3, 2016.
- The COE anticipated approval from the Association of Police Chiefs of Commissioner Loffredo's extension to a full-term appointment.
- The 2015 COE Annual Report assembled by Christie E. Kelley, COE Staff Counsel and Gina A. Levesque, COE Intake Manager, was published and available to the public. He was grateful to them and to the County Graphics Department staff for their production efforts.
- Prior commitments prevented his attendance at Palm Beach County Day in Tallahassee on January 12-14. This year, the COE was represented by Anthony C. Bennett, COE Senior Investigator I.
- Ms. Levesque attended training sessions in Orlando on January 24-29 to become a certified member of the County's All-Hazard Incident Management Team, which supported local response management teams in natural disasters.
- He, Ms. Levesque and Ms. Kelley planned on volunteering as moderators and judges at the upcoming 2016 High School Ethics Bowl to be held the first week of February at Palm Beach State College (PBSC).
- He and Ms. Kelley planned to attend the Ethics Partnership Council meeting at PBSC on February 4, 2016.

VIII. – CONTINUED

- Board of County Commissioners (BCC) Mayor Mary Lou Berger was prepared to issue a proclamation at the February 9, 2016, regular BCC meeting declaring March as Ethics Awareness Month. The COE commissioners were asked to inform Ms. Levesque of their intent to attend, so they could be acknowledged at the meeting.
- The COE's five-year-old logo was being redesigned to incorporate aspects of advisory opinions, outreach and training. Initial designs were anticipated to be shown at the March 2016 COE meeting.
- The City of Jacksonville's COE Director Carla Miller sent him an editorial that appeared in the *Florida Times-Union*, which he copied and handed out to commissioners.
 - The piece outlined the State of Florida's Senate and House bills proposing changes to penalties for violations of the public-records law.
 - The law currently required that petitioners' attorneys' fees be paid by the violating government entity.
 - Support in opposition of the bills was sought from ethics commissions statewide.
 - Commissioners were asked to review the newspaper article for discussion at the March 3, 2016, COE meeting and to issue a response to Ms. Miller, prior to the legislature's vote on March 12, 2016.

IX. COMMISSION COMMENTS

DISCUSSED: Appreciation.

Commissioner Pierman thanked Commissioner Loffredo for chairing today's meeting.

X. PUBLIC COMMENTS – None

XI. ADJOURNMENT

At 3:43 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**

MARCH 3, 2016

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. SWEARING-IN CEREMONY BY JUDGE JEFFREY COLBATH

I.A. Sarah L. Shullman

I.B. Michael F. Loffredo

Commission on Ethics (COE) Executive Director Mark Bannon stated that:

- Commissioners Sarah L. Shullman and Michael F. Loffredo were reappointed to the COE and would be sworn in today by the Chief Judge of the 15th Judicial Circuit of Florida, Jeffrey Colbath.
 - Commissioner Shullman was appointed on September 3, 2015, to complete the term of Salesia Smith-Gordon. Three Palm Beach County (County) bar associations reappointed her to serve a full four-year term ending February 29, 2020.
 - Commissioner Loffredo was appointed on March 6, 2014, to complete the term of Daniel Galo. The County Police Chiefs Association reappointed him to serve a full four-year term ending on February 29, 2020.
- All COE appointments were made under the authority of Section 2-255 of the Ethics Ordinance.

II. CALL TO ORDER

III. 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
Christie E. Kelley, COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

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

IV. INTRODUCTORY REMARKS

Mark Bannon, COE Executive Director, stated that a quorum existed with all five commissioners present.

V. NOMINATION AND ELECTION OF CHAIR

Mr. Bannon stated that the chair and vice chair positions expired in February 2016 and that an election was needed to fill those positions for terms expiring on February 29, 2018. He added that all five commissioners were eligible to serve as chair, that self-nominations were not prohibited under Robert's Rules of Order, and that no second was needed for nominations.

MOTION to nominate Michael Kridel as Chair. Motion by Michael Loffredo.

Mr. Bannon requested a roll call vote, with each commissioner announcing assent or opposition.

MOTION carried 5-0.

Mr. Bannon announced that Commissioner Kridel was reelected as chair for a two-year term.

VI. NOMINATION AND ELECTION OF VICE CHAIR

Chair Kridel requested nominations for the vice chair position.

MOTION to nominate Clevis Headley as vice chair. Motion by Michael Loffredo.

Chair Kridel requested a roll call vote, with each commissioner announcing assent or opposition.

Motion carried 5-0.

Chair Kridel announced that Commissioner Headley was reelected as vice chair for a two-year term.

VII. APPROVAL OF MINUTES FROM DECEMBER 4, 2015

MOTION to approve the December 4, 2015, minutes as presented. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.

VIII. RESOLUTION DISCUSSION

Chair Kridel read into the record the resolution issued by the Miami-Dade County Commission (Miami-Dade) on Ethics and Public Trust in opposition to the State of Florida (State) House of Representatives Bill 1021 and the State Senate Bill 1220 as follows:

The Miami-Dade Commission on Ethics and Public Trust opposes passage by the Florida Legislature of the current versions of House Bill 1021 and Senate Bill 1220. The current proposals, which eliminate mandatory attorney fee awards in public records lawsuits, will have a negative impact on Florida citizens' access to government records and on government accountability. The Commission believes that attorney fee awards in such cases should be mandatory, but that judges should retain discretion to set the amount of the fee award based on what is reasonable in the circumstances of a particular case. The Commission believes that the Florida Legislature should find a balanced solution which effectively discourages abusive uses of the Public Records Act without adversely affecting the rights of citizens to gain access to public records.

PASSED 4-0 on this 10th day of February, 2016.

Signed: Lawrence Schwartz, Chair

VIII. – CONTINUED

Mr. Bannon asked Chair Kridel to read a second resolution, issued by the City of Jacksonville (Jacksonville) Ethics Commission, in opposition to the State House of Representatives Bill 1021 and the Senate Bill 1220. Chair Kridel read as follows:

The Jacksonville Ethics Commission unanimously opposes the Florida Legislature moving forward on the current versions of House Bill 1021 and Senate Bill 1220. The current proposals, which eliminate mandatory attorney fee awards in public record cases, will have a negative impact on Florida citizens' access to government records and on government accountability. With additional input from local Florida Ethics Commissions and citizen groups, a more balanced solution can be achieved that can effectively decrease abuses of the law without adversely affecting citizen rights.

Unanimously passed 9-0.

Mr. Bannon stated that:

- The State law issue under discussion involved attorney fees, where public records were shown to be violated, and judges deciding on any fee awards made.
- He believed that a primary purpose of the judiciary was to make such determinations.
- The Town of Gulf Stream (Gulf Stream), which was adversely affected by the current law allowing mandatory fee awards in public records lawsuits, was situated within Palm Beach County's (County) jurisdiction.
- Gulf Stream deserved support.
- The County League of Cities showed interest in the pending resolutions, while the County's Legislative Delegation supported the House and Senate bills.

VIII. – CONTINUED

- He recommended that the COE take no action at this time.

Commissioner Shullman stated that:

- The statute allowed fee awards only when agencies unlawfully refused to permit public records searches. Judges determined whether a refusal occurred, and whether it was unlawful.
- Jacksonville's staff analysis cited one case of extreme abuse of the system. Abuses likely existed in Gulf Stream and among parties who used the public records statute in moneymaking enterprises.
- Her concern was that where there was unlawful refusal, judges retained the discretion to award fees. Public records laws should be reinforced through mandatory fee awards.
- She questioned whether this COE could appropriately comment on the proposed bills.
- The House and Senate versions of the bill differed in wording and meaning. The overarching issue appeared to be access to records and public servants' accountability as measured by mandatory fee awards.

Commissioner Judy Pierman said that she favored taking no action on this item.

Vice Chair Headley said that he agreed that no action should be taken by this COE on a State issue.

Commissioner Michael Loffredo said that this COE should not become involved.

Chair Kridel stated that no motion was required to endorse the bills.

Mr. Bannon clarified that:

- The Jacksonville COE executive director, Carla Miller, contacted Miami-Dade and the County COEs concerning the proposed legislation.

VIII. – CONTINUED

- Ms. Miller presented her concerns to the Jacksonville COE members last month. The Miami-Dade COE executive director decided to share the same with its commissioners.
- The COE board members could vote on whether to prepare a resolution, to merely take a position of supporting or opposing the pending bills, or to just allow discussion to die on the dais.

MOTION to issue a comment concerning the elimination of mandatory fee awards without other protections in place. Motion by Sarah Shullman.

MOTION DIED FOR LACK OF A SECOND.

IX. PRESENTATION OF NEW COE LOGO

Mr. Bannon stated that the new logo featuring the shape of the county inside a circle was designed by COE Intake Manager Gina Levesque to represent the COE's multi-faceted presence countywide.

X. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

X.A. RQO 16-004

Mr. Bannon stated that Criminal Justice Commission Executive Director Kristina Henson was present to answer any questions concerning the item.

MOTION to approve RQO 16-004. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 5-0.

XI. ITEMS PULLED FROM CONSENT AGENDA – None

XII. EXECUTIVE DIRECTOR COMMENTS

Mr. Bannon stated that:

- A search for a new staff investigator was initiated, since Anthony Bennett was promoted to senior investigator.
 - Approximately 30 applications were received.

XII. – CONTINUED

- Three finalists were chosen based on reviews of writing samples and interviews.
- A hiring announcement would be made soon.
- The COE staff planned to attend municipal gatherings to improve visibility and to exchange information with local officials.
- An Ethics Awareness Month (ethics month) event was handled by COE Staff Counsel Christie E. Kelley.

Ms. Kelley stated that:

- The Center for Applied Ethics (CAE) at Palm Beach State College (PBSC), Lake Worth Campus, was hosting a March 28, 2016, ethics event at its safety conference center from 1:30 p.m. to 3:00 p.m. Details were being finalized.
- State Attorney David Aronberg was keynote speaker.
- An assembled ethics panel was composed of Mr. Bannon, the CAE director, and Inspector General (IG) John Carey.

XIII. COMMISSION COMMENTS

XIII.A. DISCUSSED: Appreciation.

Commissioner Shullman extended thanks to the County Bar Association, the F. Malcolm Cunningham, Sr. Bar Association, and the Hispanic Bar Association, for her reappointment to a four-year term on the COE following Salesia Smith-Gordon's departure.

XIII.B. DISCUSSED: Congratulations.

Commissioner Pierman offered thanks to the three local bar associations for the reappointment of Commissioner Shullman; and congratulations to Chair Kridel and Vice Chair Headley on their reelections, and to Mr. Loffredo on his reappointment.

XIII.C. DISCUSSED: Appreciation.

Commissioner Loffredo expressed thanks to the County Police Chiefs Association for his reappointment, and congratulated the other commissioners.

XIII.D. DISCUSSED: Commission Quality.

Chair Kridel commented that the COE's quality and effectiveness levels increased during the previous two-and-a-half years as a result of community outreach and education, plus traction from the IG's office.

XIII.E. DISCUSSED: Facebook.

Ms. Levesque commented that Ms. Kelley created a mascot, "Leon the Leprechaun," to answer questions via the COE's Facebook and Twitter pages during ethics month.

XIV. PUBLIC COMMENTS – None

XV. ADJOURNMENT

At 2:13 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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

Executive Director
Mark E. Bannon

Palm Beach County Commission on Ethics

March 29, 2016

Mr. Leonard Rubin
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

Re: RQO 16-005
Conflict of Interest

Dear Mr. Rubin,

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:

May two members of the Town of Juno Beach Town Council, who each own a single-family home adjacent to a proposed townhome project (Subject Property), vote and participate in discussions concerning the land use change, the rezoning, and all other future development orders impacting the Subject Property? If the two members of the Town Council are prohibited from participating or voting on this matter, may their spouses participate in discussions concerning the Subject Property through public comment?

ANSWER:

Based on the facts submitted, the two members of the Town Council who own properties adjacent to the Subject Property may not vote or participate in any discussions concerning the land use change, the rezoning, and all other future development orders impacting this townhome project. However, the council members' spouses may participate in discussions concerning the Subject Property through public comment.

The Palm Beach County Code of Ethics (Code) prohibits public officials from using their official positions in any manner which would result in a special financial benefit, not shared with similarly situated members of the general public, to certain persons or entities, including themselves or their spouses.¹ Similarly, the Code also prohibits public officials from voting on an issue or participating in any matter coming before the Town Council which would result in a special financial benefit to themselves or their spouses.²

Whether a matter rises to the level of a prohibited conflict of interest depends on whether the officials will receive any special financial benefit. The COE has previously opined that "financial benefit" constitutes economic gain or loss.³ In addition, in evaluating conflict of interest under the Code, the COE considers the number of persons who stand to gain or lose financially from a decision and whether the gain or loss is remote and speculative. As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain into a gain or loss shared with similarly situated members of the general public.⁴ Therefore, the determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public turns on the size of the class of persons who stand to benefit

¹ 2-443(a)

² Section 2-443(c)

³ RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes either a private gain or loss).

⁴ Id.

from the measure.⁵ Where a class is large, a prohibited financial gain would result only if there are circumstances unique to the official which would enable his or her property to benefit more than the other property owners within the class. However, where the class of persons who stand to gain or lose from a decision is small, it is more likely that an official will have a conflict.⁶ The general line drawn by the Florida Commission on Ethics, and by the COE, involves situations where the interest of the public official involves 1% or less of the class, in other words, 100 or more affected persons.⁷

Under the facts submitted, the Subject Property borders seven residential single-family homes. The two council members each own one of the seven residential single-family homes adjacent to the Subject Property. As a result, the financial impact from any development of the Subject Property to both council members is not so speculative or remote as to eliminate a special financial gain or loss. Moreover, each councilmember's interest makes up over 14% of the class affected, which means the benefit to them is considered "special." Therefore, because the size of the class of persons affected is small and the potential gain or loss to the council members is not remote and speculative, the Code prohibits them from voting on or participating in the matter. In order to comply with the Code, the officials must publicly disclose the nature of the conflict before the Town Council discusses the matter, abstain from participating and voting on the matter, and file a state voting conflict form (8B). However, this participation prohibition does not extend to their spouses.⁸ Therefore, their spouses are allowed to participate in discussions concerning the Subject Property through public comment.

FACTS:

Your law firm represents the Town of Juno Beach. A developer has approached the Town regarding a proposal to construct a townhome project on three existing parcels located on U.S. Highway One (Subject Property). Two of the three parcels are improved with single-family homes. The Subject Property has a land use classification of Low Density Residential (up to five units per acre) and a zoning designation of RS-1 (Residential Single Family). The developer is seeking to increase the density on the Subject Property by amending the land use classification to Moderate Density Residential (up to fifteen units per acre) and the zoning designation to RM-2 (Residential Multiple Family-Moderate Density).

Both the land use change and the rezoning require adoption of an ordinance by the five-member Town Council. The Subject Property is located directly behind three single-family neighborhoods and is adjacent to a total of seven residential single family homes. Two members of the Town Council reside in single-family homes that are immediately adjacent to the Subject Property. The backyards of these homes and the Subject Property share a common boundary.

The Town is seeking an advisory opinion as to whether these two members of the Town Council may vote and participate in discussions concerning the land use change, the rezoning, and all other future development orders impacting the Subject Property.

LEGAL BASIS:

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

⁵ RQO 14-036

⁶ CEO 92-37 (two percent or eight percent of the property to be affected is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law).

⁷ CEO 78-96; CEO 84-80; CEO 87-18; CEO 87-95; CEO 92-52; CEO 93-12

⁸ RQO 12-058

benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:


- (1) Himself or herself;
- (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;

- (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 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.

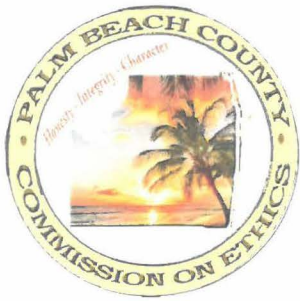
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

March 11, 2016

Ms. Tanyi Garcia, Human Resources/Risk Coordinator
City of Boynton Beach
100 E. Boynton Beach Blvd
Boynton Beach, FL 33435

Re: RQO 16-006
Conflict of Interest

Dear Ms. Garcia,

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 the City of Boynton Beach (city) from providing contracting and other services, during his non-work hours, to businesses and individuals located outside the city?

ANSWER:

Based on the facts submitted, the Code does not prohibit the employee from providing contracting and other services, during his non-work hours, to businesses and individuals located outside the City of Boynton Beach so long as those business and individuals are not vendors of the City, and the contract does not require him to provide services to the City.

The Code prohibits the employee or his outside business from entering into any contract or other transaction to provide goods or services to his public employer (the City of Boynton Beach).¹ The Code also prohibits him from entering into any contractual relationships with a vendor of the City if he would be providing good and services to the City through that contract. This would create an indirect contract between the employee and his public employer and violate Sec. 2-443(d) of the Code.

Based on the information provided, he would not "enter into any contract or other transaction for goods or services" to provide these services to the city. In addition, because he would not provide these services to any business or individuals located within the city limits, he would not be inspecting or approving his own work. Therefore, neither a violation of the misuse of public employment provision nor an appearance of impropriety would exist. Because he would provide services only to businesses or individuals located outside the city limits, a conflict of interest would not arise for him.

The employee will have an ongoing responsibility to refrain from using his official position as the Building Inspector and Plans Examiner to give a special financial benefit to himself or other specified persons or entities, including, his outside business, or a customer or client of his outside business.² Therefore, he is prohibited from soliciting business during his municipal work hours and from identifying himself as a City of Boynton Beach employee,

¹ §2-443(d)

² §2-443(a)

including providing any written or verbal communication using his title or position, to attempt to obtain a customer.

FACTS:

You are the Human Resources Risk Coordinator for the City of Boynton Beach. The City has an applicant, who the City is hoping to hire, for its Building Inspector and Plans Examiner position. The applicant holds certain certifications and licenses, and he would like to continue using his personal license on jobs outside of City of Boynton Beach limits. For example, he is a licensed contractor, and he will continue with his license and would provide contracting services outside of the Boynton Beach area. The applicant currently works for CAP Government, a vendor of the City of Boynton Beach. However, if he is hired by the City, he will no longer work for that City vendor.

LEGAL BASIS:

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

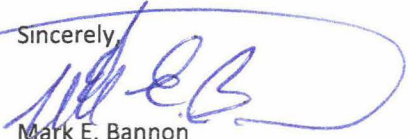
Sec. 2-443. Prohibited conduct.

- (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 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.

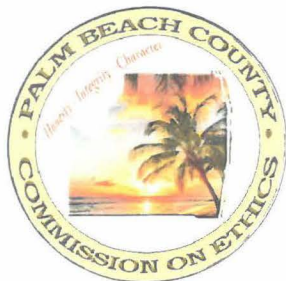
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

March 11, 2016

Ms. Pat Truscello, Senior Public Relations Specialist
Palm Beach County Department of Public Affairs
301 N Olive Ave
West Palm Beach, FL 33401

Re: RQO 16-007
Conflict of Interest/Charitable Solicitation

Dear Ms. Truscello,

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, as a Palm Beach County employee and as a member of the board of directors of the Gold Coast Band of Boynton Beach (band), from participating in a 50/50 raffle at the band's concert?

ANSWER:

Based on the facts submitted, the Code of Ethics does not specifically prohibit you from participating in a 50/50 raffle. However, with the exception of charitable non-profit organizations, Florida statutes prohibit any person from setting up, promoting, or conducting "any lottery, drawing for distribution of a prize or prizes by lot or chance."¹ Because it is outside our jurisdiction, the COE cannot opine as to whether such a 50/50 raffle would violate state law.

Under the Palm Beach County Code of Ethics, you are prohibited from using your official position to give a special financial benefit to yourself or any civic or social organization of which you are an officer or director.² Because you are a member of the Board of Directors for the band, you must take great care not to use your official position as a county employee in any way to give a special financial benefit to the band, including during the sale of these raffle tickets. This would include the wearing of any patch, badge, lapel pin or item of clothing identifying you as a county employee while engaging in ticket sales. It also includes personally identifying yourself as a county employee to potential ticket buyers. Where you act in your private capacity, not as a county employee, you are not prohibited from such solicitations in general, even where you serve of the board of directors, except where otherwise prohibited as discussed below.³

¹ §849.09, Fla. Stat. (2015); §849.0935, Fla. Stat. (2015)

² §2-443(a)

³ RQO 11-075

If the 50/50 raffle is not prohibited by state law, then you must use caution when you participate in the sale of raffle tickets. Under the Code, you are also prohibited from accepting, directly or indirectly, a gift from any vendor, lobbyist, or principal of a lobbyist of your public employer (Palm Beach County) if the value of the gift exceeds \$100 annually in the aggregate.⁴ Therefore, if any vendor, lobbyist, or principal of a lobbyist of the county purchases tickets for the raffle, you 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 a prohibited source, even where the funds are given to the City of Boynton Beach on behalf of the band. This prohibition also applies to any municipal employees who may assist you in the ticket sales, which means they cannot sell over \$100 in raffle tickets to vendors or lobbyists of their municipality. Indirect gifts of this nature are sometimes referred to as "pass-through" gifts. Further, while the Code allows County vendors or lobbyists to be solicited for funds of any amount on behalf of a 501(c)(3) non-profit charitable organization, that exception does not apply here since the band does not have that designation.

FACTS:

You are an employee of Palm Beach County, serving as the Senior Public Relations Specialist in the Public Affairs Department. You are also a member of the Board of Directors for the City of Boynton Beach Gold Coast Band. The band is partially funded by the City of Boynton Beach, but more funds are needed to purchase instruments. The raffle donations would be used to buy instruments. The band, which is comprised of volunteers, is hosting a concert on March 13, 2016 at the Boynton Beach High School. The concert is open to the public. You are expecting approximately 500 attendees.

The Board of Directors would like to hold a 50/50 raffle at the concert. The band would sell raffle tickets before the concert for \$1 each. During intermission, a winner would be drawn who would receive half the money collected, and the City would receive the other half. The band would then be allowed to buy instruments with the money the City receives.

COE staff reviewed the IRS non-profit charitable organization database and did not find the Gold Coast Band listed as a 501(c)(3).

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a) and §2-444(a)(1) 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;
- (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.

⁴ §2-444(a)(1)

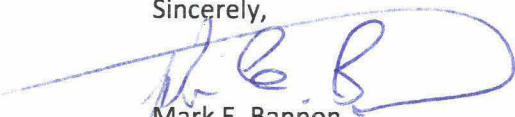
Sec. 2-444. Gift law.

- (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.

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



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

Palm Beach County Commission on Ethics

Executive Director

Mark E. Bannon

March 18, 2016

Ms. Johnnie-Mae Chaney
Palm Tran Operations
3201 Electronics Way
West Palm Beach, FL 33407

Re: RQO 16-008
Contractual Relationships

Dear Ms. Chaney,

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 or your outside business from contracting with Palm Beach County and the municipalities within the county, when you are an employee of Palm Beach County?

ANSWER:

Based on the facts submitted, you and your outside business are prohibited from contracting with your public employer (the county), unless one of several exceptions applies. However, the Code does not prohibit you or your outside business from contracting with any of the municipalities within Palm Beach County since none of the municipalities are your public employer.

The Code prohibits you from using your official position to give yourself or your outside business a special financial benefit.¹ In addition, under the Code, you or your outside business may not enter into a contract or other transaction for goods or services with the county, directly or indirectly, unless one of several exceptions applies.² Based upon the information you have provided, as an owner of the outside business you are not eligible for a part-time employment waiver,³ your business is not the sole source of landscaping services in the County,⁴ and the landscaping services would not constitute an emergency purchase.⁵ Therefore, these exceptions are not applicable to your situation.

However, under the facts presented, there are two possible exceptions where you could enter into a contract with the county without violating the Code's contractual relationship prohibition. The Code provides an exception for contracts entered into under a process of sealed, competitive bidding, where your outside business is the lowest bidder.⁶ For this exception to apply, you cannot have participated in the bid specifications or determination of the lowest bidder, cannot have used your position in any way to influence the award, and you must have disclosed the nature of your interest in the business submitting the bid. If you fully complied with these requirements, the Code does not prohibit you or your outside business from contracting with the county.

¹ §2-443(a)

² §2-443(d)

³ §2-443(e)(5)

⁴ §2-443(e)(3)

⁵ §2-443(e)(2)

⁶ §2-443(e)(1)

The Code also provides an exception when the total amount of the contracts or transactions in the aggregate between an employee's outside business and their public employer does not exceed five hundred dollars (\$500) per calendar year.⁷ Therefore, if the total amount of your outside business' contracts or transactions with the County does not exceed \$500, in the aggregate for the calendar year, then you are not prohibited from contracting with your public employer (the county).

Thus, unless one of those two exceptions applies, you and your outside business are prohibited from contracting with the county. However, you are not prohibited from contracting with any of the municipalities within Palm Beach County as long as you do not use your official position with the county to give you or your outside business a special financial benefit.

FACTS:

You are an employee of Palm Beach County, serving as a bus operator for Palm Tran. You own a landscaping company and would like to contract for services with municipalities and the county. Your landscaping company provides services, such as complete lawn care, landscaping, tree trimming, and hedge trimming.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a) and §2-443(c) 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;
- (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 § 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.
- (e) ***Exceptions and waiver.***
- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee or member of his or her household has in no way participated in the determination of the bid specifications or the determination of the lowest bidder;
 - b. The official or employee or member of his or her household has in no way used or attempted to use the official or employee's influence to persuade the agency, governmental entity or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
 - c. The official or employee, prior to or at the time of the submission of the bid, has filed a statement with the supervisor of elections and the commission on ethics, disclosing the nature of the interest in the outside employer or business submitting the bid.

⁷ §2-443(e)(4)

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

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

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



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

Executive Director
Mark E. Bannon

Palm Beach County Commission on Ethics

March 31, 2016

Mr. John C. Randolph, Esquire
Jones, Foster, Johnston & Stubbs, P.A.
505 S. Flagler Dr, Ste 1100
West Palm Beach, FL 33401

Re: RQO 16-009
Cone of Silence

Dear Mr. Randolph,

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 cone of silence section of the Lobbyist Registration Ordinance prohibit the Town of Palm Beach Retirement Board of Trustees (board) from discussing the investment consulting firms the board shortlisted at a public meeting before the recommendation to award the contract is made? May the short-listed firms be posted on the website where the Town broadcasts its bids before the recommendation to award is made?

ANSWER:

Section 2-352 of the Lobbyist Registration Ordinance defines "officials" as "members appointed by the...members of local municipal governing bodies to serve on any advisory quasi-judicial, or any other board of the county, state or any other regional, local, municipal, or corporate entity." Therefore, the five Town residents who are appointed to the board by the Town Council meet the definition of officials and are under the jurisdiction of the COE.¹ The Town employees who are members of the board remain subject to the jurisdiction of the COE as employees of the Town.

Based on the facts submitted, the cone of silence section of the Lobbyist Registration Ordinance does not prohibit the board from discussing at a public meeting the firms it shortlisted before the board makes its recommendation to the Town of Palm Beach Town Council. In addition, the ordinance does not prohibit the short-listed firms from being posted on the website where the Town broadcasts its bids before the recommendation to award the contract is made.

The Lobbyist Registration Ordinance prohibits all oral communication between any person seeking the award of a competitive solicitation and county or municipal elected officials or their staff or any

¹ RQO 11-060

employee authorized to act on behalf of the county or the municipal governing body to award a particular contract.² Here, while the board members are not elected Town officials, the board is authorized to act on behalf of the Town to award the investment consultant contract. Thus, the board members are subject to the cone of silence section of the Lobbyist Registration Ordinance and are prohibited from any oral communication with any person seeking the award of the contract. However, the cone of silence section does not apply to oral communication that occurs on the record at a public meeting.³ Therefore, under these facts, if a member of the public asks about the recommendations of the three short-listed firms during a public meeting, the cone of silence requirement would not apply.

FACTS:

Your law firm represents the Town of Palm Beach, and you are requesting an advisory opinion on behalf of the Town's Retirement Board of Trustees. The board acts in a fiduciary capacity for the Town's retirement funds and in an advisory capacity to the Town Council on matters relating to the administration of the Town's various retirement plans. The board is comprised of nine members:

- a Town employee who is a member of benefit group general or benefit group lifeguard,
- a Town employee who is a member of benefit group firefighter,
- a Town employee who is a member of benefit group police officer,
- five (5) residents of the Town who are appointed to the board by the Town Council, and
- the Town Manager.

The board held a selection committee meeting to review and create a short list of firms for investment consulting services. The board short-listed three firms which will be invited to provide presentations and interviews at a future meeting. The Town is concerned that members of the public will ask about the discussions and recommendations of the three firms at its next regular meeting. The board will make a recommendation to the Town Council regarding the award of the contract. It has been the Town's practice to withhold the selection committee's recommendations until intent to award is made public through the Town's website. The Board itself makes the award. There is no subsequent approval needed from the Town Council. The Board consists of nine members, five of whom are appointed by the Town Council.

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.

² §2-355(a)

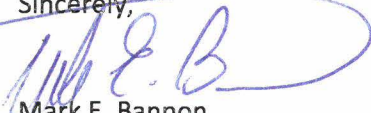
³ §2-355(d)

- (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.

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



Commissioners

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

Executive Director

Mark E. Bannon

Palm Beach County Commission on Ethics

March 16, 2016

Ms. Wanda Sherman, GIS/CADD Technician
Palm Beach County Engineering and Public Works
2300 North Jog Rd.
West Palm Beach, FL 33411

Re: RQO 16-010
Conflict of Interest

Dear Ms. Sherman,

Your request for an expedited advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

As a GIS/CADD technician employed by Palm Beach County, does the Palm Beach County Code of Ethics (Code) prohibit you from accepting part-time employment with a former employer that is not a vendor of the County and where the work performed for part-time employer would not be done during county work hours?

ANSWER:

Based on the facts submitted, the Code of Ethics does not prohibit you from obtaining part-time employment with a private employer that is not a vendor of Palm Beach County.

The Palm Beach County Code of Ethics (Code) generally prohibits public employees from accepting employment or contracting for services, directly or indirectly, with any "outside employer or business" that is a vendor of their public employer.¹ While there are several exceptions to this rule, where the outside employer is not a vendor of the public employer no exception is needed, because no conflict of interest is created in the acceptance of such employment. Under the facts you submitted, your proposed outside employer is not a vendor of your public employer, thus the Code would not prohibit such part-time employment.

However, also keep in mind that you are prohibited from using your position as a GIS/CADD technician with the County to assist your outside employer, or any customer or client of your outside employer or business (i.e., FPL), in any manner that could result in a "special financial benefit" for this outside employer or their customer or client. A "customer or client" of your outside employer or business is defined as any person or entity for which your outside employer has provided at least \$10,000 worth of goods or services over the previous twenty-four months. The Code prohibits acts or omissions by a public official or employee using their official position, that lead to an outside employer or business, or a customer or client of this outside employer or business, obtaining any special financial benefit that they are not entitled to receive. A "financial benefit" is defined as, "any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or promise of any of these, or anything else of value." A "special financial benefit" is one not shared by "similarly situated members of the general public."²

Further, the Code prohibits the use of an official or employee's public position to obtain any "special privilege, benefit, or exemption" financial or otherwise, for any person or entity, where the public employee acts in a manner that is determined to be "corruptly." The Code defines "corruptly" as, "done with wrongful intent and for the purpose of obtaining, or

¹ §2-443(d), *Contractual relationships*.

² §2-443(a), *Misuse of public office or employment*.

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

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.”³ Finally, even where the Code does not prohibit such outside employment, you should remember that you are also bound by the policies and rules of your public employer concerning outside employment.

FACTS:

You are employed by Palm Beach County as a GIS/CADD technician. Your former employer, QCData, a private firm based in Denver, Colorado, has offered you part-time employment on weekends. You have concluded that QCData is not a vendor of Palm Beach County, although they do contract with Florida Power and Light (FPL) for work in Palm Beach County.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a) and §2-443(b) of the PBC 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:
 - (4) An outside employer of 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 or employee’s outside employer or business;
- (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.
- (d) **Contractual relations.** 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.* (Emphasis added)

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

³ §2-443(b), *Corrupt misuse of official position.*