



*HONESTY - INTEGRITY - CHARACTER*

**Palm Beach County**

**Commission on Ethics**

300 North Dixie Highway  
West Palm Beach, FL 33401  
561.355.1915  
FAX: 561.355.1904  
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**E-mail:**

[ethics@palmbeachcountyethics.com](mailto: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 and Compliance Manager**

Gina A. Levesque

**General Counsel**

Christie E. Kelley

**Chief Investigator**

Anthony C. Bennett

**Investigator**

Abigail Irizarry

# *Agenda*

June 2, 2016 – 1:30 pm  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

Meeting will begin at 1:30pm  
Executive Session at 1:35pm  
Regular Agenda will resume at 2:10pm

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- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from May 5, 2016
- V. Executive Session
  - a. C15-029
- VI. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 16-012
  - b. RQO 16-013
  - c. RQO 16-015
- VII. Items Pulled from Consent Agenda
  - a.
- VIII. Proposed Advisory Opinions
  - a. RQO 16-011
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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

**MAY 5, 2016**

**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 – Arrived later  
Sarah L. Shullman

**STAFF:**

Mark E. Bannon, Commission on Ethics (COE) Executive Director  
Anthony C. Bennett, COE Chief Investigator  
Abigail Irizarry, COE Investigator I  
Christie E. Kelley, COE General Counsel  
Gina A. Levesque, COE Intake and Compliance Manager

**ADMINISTRATIVE STAFF:**

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

**III. INTRODUCTORY REMARKS**

Chair Michael Kridel stated that an executive session and advisory opinions constituted today's meeting.

**IV. APPROVAL OF MINUTES FROM APRIL 7, 2016**

**MOTION to approve the April 7, 2016, minutes as presented. Motion by Clevis Headley, seconded by Sarah Shullman, and carried 4-0. Judy Pierman absent.**

**RECESS**

**At 1:32 p.m., the chair declared the meeting recessed for an executive session.**

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

**RECONVENE**

**At 2:16 p.m., the meeting reconvened with Chair Kridel, Vice Chair Headley, and Commissioners Loffredo, Pierman, and Shullman present.**

**V. EXECUTIVE SESSION**

**a. C15-024**

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

Complainant, Lorne Alter, filed the above referenced complaint on October 16, 2015, alleging that Respondent, Michael Fitzpatrick, former City of Boynton Beach Commissioner, violated §2-443(a), §2-443(b), and §2-443(c) of the Palm Beach County Code of Ethics by failing to abstain from voting on matters that gave an improper special financial benefit to himself and to a charitable entity of which he was closely associated.

Pursuant to §2-258(a)<sup>1</sup> of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On May 5, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry and Probable Cause Recommendation. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

**V.a. – CONTINUED**

Therefore it is:

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

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on May 5, 2016.

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) – None**

**VII. ITEMS PULLED FROM CONSENT AGENDA – None**

**VIII. PROPOSED ADVISORY OPINIONS**

**VIII.a. Request for Opinion (RQO) 16-011**

Christie E. Kelley, COE General Counsel, stated that the City of West Palm Beach (City) submitted the following:

**QUESTION 1:**

Was a City employee, who owned an outside business that offered fire rescue training services, prohibited from contracting with the City to provide that training to the City's fire rescue employees if the City paid directly or indirectly for the training?

**ANSWER 1:**

Staff submitted the opinion that the Code of Ethics (Code) prohibited the contract, because none of the exceptions to the contractual relationship provision applied.

**VIII.a. – CONTINUED**

As the owner of the business, the City employee was not eligible to receive an outside employment waiver. The eligibility requirements for this waiver prohibited the employee from being involved with the contract between the business and the City in any way. As the owner of the business, the City employee would not be able to meet this requirement.

**QUESTION 2:**

Was the employee who worked part-time for a business that offered fire rescue training prohibited from providing that training to City fire rescue employees when that business was owned by another City employee?

**ANSWER 2:**

Staff submitted the opinion that the arrangement was prohibited because none of the exceptions to the contractual relationship provision applied here as well. The City employee who worked part-time at this business could not receive a part-time employment waiver because the owner of the business was a City employee, and that business would not be able to contract with the City. Therefore, the employee who worked part-time for the business would not be able to get the outside employment waiver.

**QUESTION 3:**

Was the City employee who worked part-time for a business that was not owned by a City employee, and which offered fire rescue training, prohibited from providing such training to City fire rescue employees?

**ANSWER 3:**

Staff submitted that the City employee may be eligible for an outside employment waiver under Section 2-443(e)(5) of the Code. To be eligible for the outside employment waiver, the City employee seeking the waiver could not be involved with the contract in any way; could not have helped determine the requirements or award the contract; could not interfere with the employee's public job; must have complied with all the rules regarding outside employment, received written permission from the supervisor, and completed a conflict of interest waiver form.

### VIII.a. – CONTINUED

However, under this subsection, the final requirement of the outside employment waiver was that the employee or a relative of the employee may not work in the County or municipal department that enforced, oversaw, or administered the subject contract. However, the Code did not define what “department” meant. Since the COE had the power to interpret the Code, COE staff recommended that for the purposes of Section 2-443(e)(5)(a) the term “department” mean only the persons within the section or division of that public entity that was specifically authorized to enforce, oversee, or administer the subject contract, such as the administrator, managers, supervisors, or other employees who had direct authority over the subject contract.

The rationale for the decision was that most public entities did not have enough personnel in the training department, so they could not provide all of the required first-responder training. They had to rely on private, outside sources who often relied on current first-responders possessing specific training. If the word “department” in this section was defined to mean the entire municipal or county fire department, then none of the those personnel could ever train someone in the same organization or public entity as the municipal or county fire department personnel did, even if they could potentially be eligible for the outside employment waiver.

Therefore, staff submitted that as long as the City employee met all the waiver requirements as set forth in Section 2-443(e)(5), including not working directly within the section or division of the City fire rescue department or any other City department that was specifically authorized to enforce, oversee, or administer the contract, then the City employee who worked part-time for a business that was not owned by another City employee was not prohibited from providing that training.

Ms. Kelley added that:

- The opinion helped employees who, on their days off, worked for the outside employer.
- The training division was prohibited from obtaining the outside employment waiver because it typically chose the vendors that provided the training.

Mark E. Bannon, COE Executive Director, said that training division personnel included overall administration staff of the fire chief, assistants, and anyone with decision-making authority towards contractors.

### **VIII.a. – CONTINUED**

Ms. Kelley said that small departments with contract oversight provided by the entire staff were not eligible for the outside employment waiver. Under the COE's definition of department, the individual would be able to work for an outside vendor as long as she or he did not have a conflict in cases where the department oversaw the contract, or had any input into the contract, she said.

Mr. Bannon said that:

- Although an assistant fire chief did not work within the training division, he was still under the prohibition because of his ability to approve or move forward any contracts.
- If the COE board preferred different Code language, it could be rewritten today or brought back at upcoming meetings.
- The purpose of the outside-employment waiver prohibition as to prevent someone possessing power over the contract from working within the contract.

Following general discussion about revisions to the Code language relating to segregation of duties and fraud prevention among small departments with few staff, Chair Kridel commented that Code language could limit interpretation to fire rescue alone.

Commissioner Sarah Shullman stated that she did not agree with a limited interpretation applicable to fire rescue alone.

**MOTION to defer discussion until the next meeting. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.**

### **VIII.b. Request for Opinion (RQO) 16-014**

Ms. Kelley stated that Ms. Virginia Walton, Town Clerk for the Town of Loxahatchee Groves (Town) submitted the following:

#### **QUESTION:**

Did the Code prohibit her from providing consulting services as an independent contractor to the City of Riviera Beach (Riviera Beach) while she was employed by the Town, when the Town had no contracts to provide goods or services to Riviera Beach?

**VIII.b. – CONTINUED**

**ANSWER:**

Staff submitted that Section 2-442 of the Code specifically exempted other governmental entities from the definition of an outside employer. Based on the facts provided, Riviera Beach did not meet the definition of an outside employer and had no contract to provide goods or services to the Town, so a conflict of interest did not arise for Ms. Walton in her work as an independent contractor for Riviera Beach. Therefore, she was not prohibited from accepting part-time employment with Riviera Beach.

**MOTION to accept RQO 16-014 as proposed. Motion by Clevis Headley, seconded by Sarah Shullman, and carried 5-0.**

**IX. EXECUTIVE DIRECTOR COMMENTS**

Mr. Bannon stated that:

- He and Miami-Dade County COE Executive Director Joseph Centorino met for discussion about their assignments and responsibilities.
- He and Ms. Kelley attended an Ethics Partnership Council meeting at Palm Beach State College on April 28, 2016.
- He and Inspector General John Carey made a brief presentation at a Palm Beach County (County) League of Cities function on April 27, 2016.
- He and staff attended April 2016 council meetings at the City of Boynton Beach, the Towns of Palm Beach, Palm Beach Shores, and Loxahatchee Groves, and the Village of Tequesta. Meetings in May 2016 were scheduled for the Villages of Royal Palm Beach and Wellington, the Towns of Jupiter Inlet Colony, Lake Clarke Shores, and Haverhill. He was scheduled to attend a June 2016 City of Lake Worth Community Redevelopment Agency meeting.
- He conducted ethics training for Town of Manalapan officials on April 5, 2016, and for Riviera Beach officials on April 30, 2016.
- Ms. Kelley conducted gift law training for members of the Coalition of Boynton West Residential Association on April 13, 2016, and gave an overview presentation of the COE to the Municipal Clerks' Association on April 28, 2016.



**IX. – CONTINUED**

- The COE's Intake and Compliance Manager, Gina Levesque, was presented with the Fire Rescue Professional Partnership Award for her work with the all-hazards incident team at an April 29, 2016, ceremony held at the County convention center.
- The Top Ten Ethics Rules were updated on pocket guides. Changes to pocket handbooks were underway.

**X. COMMISSION COMMENTS – None**

**XI. PUBLIC COMMENTS**

**XI.a. DISCUSSED:** League of Cities Workshop.

Richard Radcliffe, County League of Cities Executive Director, commented that Mr. Bannon's appearance at the April 2016 workshop, along with Inspector General Carey, was appreciated.

**XI.b. DISCUSSED:** Commendation.

Commissioner Michael Loffredo offered congratulations to Ms. Levesque on her award for excellence as compliance manager for fire rescue personnel.

**XII. ADJOURNMENT**

**At 2:49 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

June 2, 2016  
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**Commissioners**  
Michael S. Kridel, *Chair*  
Clevis Headley, *Vice Chair*  
Michael F. Loffredo  
Judy M. Pierman  
Sarah L. Shullman

**Executive Director**  
Mark E. Bannon

May 20, 2016

Mr. Elliot Cohen, Director of Communications  
City of West Palm Beach  
401 Clematis Street  
West Palm Beach, FL 33401

Re: RQO 16-012  
Conflict of Interest/Charitable Solicitation

Dear Mr. Cohen,

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 sitting as a member of the Volunteer Leadership Board of the Palm Beach County chapter of the American Cancer Society (ACS), from becoming a member of ACS Cancer Action Network (CAN), or from participating in fundraising efforts for the ACS?

**ANSWER:**

The Code prohibits you from using your official position as the Director of Communications for the City of West Palm Beach in any way to give a special financial benefit, not share with similarly situated members of the general public, to specified persons or entities, including yourself or a non-profit organization where you serve as an officer or director.<sup>1</sup> Based on the facts provided here, you are not an officer or director of the ACS or ACS Cancer Action Network; you serve as a member of the ACS Volunteer Leadership Board and the ACS Cancer Action Network. The Code also prohibits you from using your official position to corruptly secure a special benefit, privilege, or exemption for any person or entity.<sup>2</sup>

Based on the facts presented, under the Code, you are not prohibited from serving as a member of the local ACS Volunteer Leadership Board or from becoming a member of the ACS Cancer Action Network as long as you do not use your position as Director of Communications to give an improper special benefit to yourself, the person or entity from whom you are soliciting donations, or to any of the specified person or entities under Sec. 2-443(a)(1-7).

In addition, you are not prohibited from participating in efforts to fundraise for the ACS. Because you do not serve as an officer or director of ACS, the Code does not prohibit you from fundraising on behalf of ACS. If you solicit donations, directly or indirectly, in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the City of West Palm Beach, you must maintain a record of the solicitations from City vendors, lobbyists, principals or employers of lobbyists, and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.<sup>3</sup>

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<sup>1</sup> §2-443(a)

<sup>2</sup> §2-443(b)

<sup>3</sup> §2-444(h)(1)-(2)

However, you are prohibited from soliciting donations from any person or entity that has a current application for approval or award of any nature before the City and from using any City resources in the solicitation of donations for any non-profit organization, including ACS.<sup>4</sup>

**FACTS:**

You are Director of Communications for the City of West Palm Beach. You also serve as a member of the Volunteer Leadership Board of the Palm Beach County chapter of the American Cancer Society. You would like to participate in fundraising efforts for the ACS, including approaching individuals and businesses to donate to ACS campaigns.

The American Cancer Society is a nationwide, community-based voluntary health organization dedicated to eliminating cancer as a major health problem. The American Cancer Society, Inc., is a 501(c)(3) nonprofit corporation governed by a Board of Directors that sets policy, develops and approves an enterprise-wide strategic plan and related resource allocation, and is responsible for the performance of the organization as a whole, with the advice and support of regionally based volunteer boards. Headquartered in Atlanta, Georgia, the ACS has regional and local offices throughout the country that support 11 geographical Divisions to ensure a presence in every community.

The Society's structure includes a central corporate office in Atlanta, Georgia, as well as regional and local offices supporting 11 geographic Divisions. The regional and local offices are organized to engage communities in the cancer fight, delivering patient programs and services, and raising money at the local level.

As part of the local ACS Board, you have been asked to pay a fee to become a member of ACS Cancer Action Network. The American Cancer Society Cancer Action Network is described as the nation's leading voice advocating for public policies that are helping to defeat cancer. As the advocacy affiliate of the ACS, the Cancer Action Network works to encourage elected officials and candidates to make cancer a top national priority. ACS Cancer Action Network utilizes its expert capacity in lobbying, policy, grassroots, and communications to amplify the voices of patients in support of laws and policies that save lives from cancer. The ACS and the ACS Cancer Action Network are independent organizations.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a), §2-443(b), and §2-444(h) 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;
  - (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;
  - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
  - (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;

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<sup>4</sup> §2-444(h)(1) & (3)

- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
  - (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.
- (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.
- (h) Solicitation of contributions on behalf of a non-profit charitable organization.
- (1) Notwithstanding the prohibition on gifts as outlined in subsections (a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.
  - (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the commission on ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on ethics. The form shall be filed within thirty (30) days from the occurrence of the event for which the solicitation was made, or if no event, within thirty (30) days from the occurrence of the solicitation.
  - (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions described in this subsection.

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

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

Sincerely,



Mark E. Bannon,  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

June 2, 2016  
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**Commissioners**

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

**Executive Director**  
Mark E. Bannon

May 23, 2016

Mr. Todd McLendon, Councilman  
Town of Loxahatchee Groves  
P.O. Box 1293  
Loxahatchee, FL 33470

Re: RQO 16-013  
Misuse of Office/Voting Conflict

Dear Councilman McLendon,

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 1:**

Would a conflict of interest arise for you as an elected official of the Town of Loxahatchee Groves to speak with the Town's legal counsel regarding a potential conflict between a Town land development code and the Florida constitution when you have a pending code complaint against you regarding the same land development code?

**ANSWER 1:**

The Code prohibits you from using your official position as a Town of Loxahatchee Groves Councilman in any way, or to influence others to take or fail to take any action, which would give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities, including yourself.<sup>1</sup> The Code also prohibits you from using your official position as a Councilman to corruptly secure a special benefit for any person.<sup>2</sup> Corruptly means the action was taken with a wrongful intent and inconsistent with the proper performance of your public duties. Based on the information provided, you stated that you will only discuss with the Town's legal counsel the constitutionality of the Town's land development code and will refrain from discussing the code complaint against you. Therefore, as long as you do not use your discussions with the Town's legal counsel to give yourself an improper special benefit, a conflict of interest would not arise for you if you discuss the potential conflict between the Town land development code and the Florida Constitution.

**QUESTION 2:**

Would a voting conflict arise for you if you vote on the land development code during a Town council meeting while you have the pending code complaint against you?

**ANSWER 2:**

The Code prohibits you from using your official position as a Councilman in any way to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities, including yourself.<sup>3</sup> Similarly, the Code prohibits you from voting on or participating in any matter before the Town Council which will give a special financial benefit to yourself.<sup>4</sup> In evaluating conflict of interest under the Code, the COE considers the number of persons who stand to gain or lose from a decision and whether the gain or loss is remote

<sup>1</sup> §2-443(a)

<sup>2</sup> §2-443(b)

<sup>3</sup> §2-443(a)

<sup>4</sup> §2-443(c)

and speculative.<sup>5</sup> Additionally, for a financial benefit to be "special," the benefit must affect the voting member uniquely, rather than affecting everyone in a community in the same way. When 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. When a class is large, a prohibited financial gain would result only if there are circumstances unique to the voting official which would enable him to gain more than the other members of the class. The general line drawn by the Florida Commission on Ethics involves situations where the interest of the public official involves 1% or less of the class, in other words, 100 or more affected persons.<sup>6</sup>

As long as any benefit or loss attributed to you as an individual resident of the Town is shared with similarly situated members of the general public and does not constitute a unique circumstance whereby any personal gain or loss to you exceeds significantly other members of the affected class, a conflict would not exist. Under the facts presented, if the changes to the Town's land development code that you are voting on would affect all of the residents of the Town of Loxahatchee Groves in the same way, then you would not have a conflict of interest because the size of the class would be large. However, if the changes to the Town's land development code would affect a small class of residents within the Town of Loxahatchee Groves and would provide a unique benefit to you, then a conflict of interest would exist. In such a case, in order to avoid violating the voting conflict provision of the Code, you need to publicly disclose the nature of the conflict, abstain from voting, not participate in discussion on the matter, complete and file a State of Florida Commission on Ethics Conflict Form (Form 8B), and submit a copy of the Form 8B to the COE.

**FACTS:**

You are a councilman for the Town of Loxahatchee Groves. You believe that the Town has a land development code which appears to be in violation of the Florida Constitution. You have a pending code complaint against you concerning this land development code. You would like to speak with the Town's legal counsel about the potential conflict of the land development code, but you will not discuss the case against you. The Town of Loxahatchee Groves has a population of over 3,000 people. Property owners in the Town of Loxahatchee Groves must comply with the Town land development code.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a), §2-443(b), 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;
- b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of

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<sup>5</sup> RQO 14-006; RQO 13-011

<sup>6</sup> CEO 93-12

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.

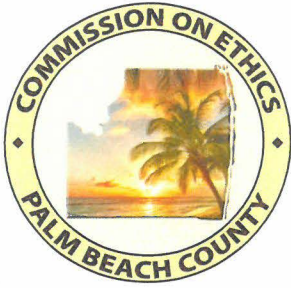
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

June 2, 2016  
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**Commissioners**

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Sarah L. Shullman

**Executive Director**  
Mark E. Bannon

May 26, 2016

Mr. Leondrae Camel  
City Manager – City of South Bay  
335 SW 2<sup>nd</sup> Avenue  
South Bay, FL 33493

Re: RQO 16-015  
Conflict of Interest

Dear Mr. Camel,

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:**

Would a conflict of interest arise for you as the city manager of the City of South Bay (City), if the City applies for the demolition of a building on your sister-in-law's property through a Palm Beach County program funded by the U.S. Department of Housing and Urban Development?

**ANSWER :**

The Palm Beach County Code of Ethics (Code) prohibits you from using your official position as the city manager in any way, or influencing others to take or fail to take any action, to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities, including yourself, and certain members of you, your spouse or your domestic partner's family.<sup>1</sup> This section does not apply to other "in-law" relations. You are also prohibited from using your official position to corruptly secure a special benefit, privilege, or exemption for any person.<sup>2</sup> Under the Code, corruptly means the official action was taken with a wrongful intent and for the purpose of receiving any benefit which is inconsistent with the proper performance of your public duties.

Based on the facts provided, neither you nor any of the persons or entities specified in Sec. 2-443(a)(1-7) would receive a special financial benefit from the demolition of the building. You, your spouse, and your sibling do not have any ownership interest in the building or the property. Further, while any potential special financial interest given to your brother using your official authority is subject to Sec. 2-443(a)(1-7), a special financial interest given to your brother's wife is not under this section. Although the Code specifies that certain family members are subject to this provision, your only "in-law" relations that are specified as being subject to this provision are the family members of your spouse. In addition, you stated you were not involved in selecting the buildings that were submitted for demolition and did not influence the selections. The City's Code Compliance Division and the Building Department were responsible for determining which buildings in the City were unsafe. The City's economic manger then recommended for demolition the buildings deemed to be the most hazardous to the safety and welfare of the general public. Therefore, under the Code, a prohibited conflict of interest would not arise for you if the City applies to the Palm Beach County program for the demolition of the building on your sister-in-law's property. Moreover, the Code's provision against "corrupt" misuse of your authority is also not applicable in this

<sup>1</sup> §2-443(a)

<sup>2</sup> §2-443(b)



circumstance. The use of your authority as the city manager to ultimately request the demolition of buildings that have been deemed unsafe cannot be considered a corrupt misuse of your authority, as that act is not inconsistent with the proper performance of your public duties.

Although you do not have a conflict of interest under the Palm Beach County Code of Ethics, the COE does not have jurisdiction over the regulations that the Palm Beach County Department of Economic Sustainability (DES) must follow and cannot opine on whether you may have conflict of interest under the DES Policies and Procedures Manual.

**FACTS:**

You are the city manager for the City of South Bay. The City previously applied to the Palm Beach County Department of Economic Sustainability (DES) for the demolition of certain properties. The City recently asked that the DES remove three of the originally approved buildings and replace them with two buildings that have been deemed by the building inspector as more unsafe and in need of demolition. One of the properties is 185 NW 10<sup>th</sup> Ave. The building has fallen into disrepair. It has accumulated code violations and has become a public safety hazard. This property was owned by Shamekia Vickers Camel, who is married to your sibling, and Louella Vickers, the grandmother of Ms. Camel, as tenants in common. Upon Louella Vickers' death, Ms. Camel became the sole owner of the property. You, your spouse, and your sibling do not have any ownership interest in the property.

The City's Code Compliance Division and the Building Department through a defined process deemed the building unsafe in accordance to the Florida Building Code. The City's economic development manager recommended that your sister-in-law's building and another building be demolished through one of the U.S. Department of Housing and Urban Development's Community Development Block Grant Programs offered through the County. In order for the property to be placed on the approved list, it was recommended that a letter be drafted to have three (3) units removed from an original list and replaced with two (2) units that were deemed more unsafe by the Code Compliance Division and the Building Department. As the city manager, you are responsible for drafting that letter and forwarding it to Palm Beach County Department of Sustainability.

The DES has reviewed the City's application. The DES has asked you to determine if your relationship to Shamekia Vickers Camel creates a potential conflict of interest.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a) and §2-443(b) 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;
- (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;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (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;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of

indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;

- (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.

(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.

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

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

Sincerely,



Mark E. Bannon,  
Executive Director

CEK/gal

June 2, 2016

Mr. Norm Ostrau, Ethics Officer  
City of West Palm Beach  
401 Clematis Street, 5<sup>th</sup> Floor  
West Palm Beach, FL 33401

Re: RQO 16-011  
Contractual Relationship

Dear Mr. Ostrau,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting on June 2, 2016.

**QUESTION 1:**

Does the Palm Beach County Code of Ethics (Code) prohibit a City of West Palm Beach (City) employee who owns an outside business which offers mandatory fire rescue training from providing such training to City fire rescue employees if (1) the City pays for the training directly or (2) City fire rescue employees pay for the training directly and are then reimbursed by the City?

**ANSWER 1:**

In general, the Code prohibits an employee, directly or indirectly, from entering into any contract or other transaction to provide goods or services to his or her public employer unless one of the exceptions to the contractual relationship prohibition applies.<sup>1</sup> This prohibition includes any contract or transaction between the public employer and the employee, the employee's outside business, or the employee's outside employer.<sup>2</sup> Even where another City fire rescue employee pays the City employee or his company for this training, and is later reimbursed by the City for this cost, an "indirect" contractual relationship would still be created. Under the Code, indirect contractual relationships are also prohibited. In addition, the Code prohibits the employees from using their official position to gain a special financial benefit for themselves or their outside employer or business.<sup>3</sup>

As the owner of the business, the City employee who has an outside business which offers the training is not eligible to receive an outside employment waiver, even where he may also be a part-time employee of this outside business.<sup>4</sup> The eligibility requirements for this waiver prohibit the employee from being involved with the contract between the business and the City in any way. As the owner of the business, the City employee would not be able to meet this requirement. Therefore, based on the fact that this employee cannot receive an outside employment waiver and on your assertion that none of the other exceptions to the contractual relationship prohibition apply, the City employee may not contract with the City to provide the training to City fire rescue employees. In addition, because indirect contractual relationships are prohibited, the City employee with an outside business which offers fire rescue training cannot circumvent the contractual relationship prohibition of the Code by accepting payment directly from a City fire rescue employee when the fire rescue employee will then be reimbursed for the training by the City. However, the Code does not prohibit the City employee from contracting

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<sup>1</sup> §2-443(d), §2-443(e)

<sup>2</sup> Id.

<sup>3</sup> §2-443(a)

<sup>4</sup> §2-443(e)(5)

with the County or with other municipalities, excluding the City of West Palm Beach, to provide fire rescue training to County or municipal fire rescue employees.<sup>5</sup>

The burden is on employees with the secondary employment to ensure that their secondary employment does not conflict with their City employment. Therefore, they have the ongoing responsibility to accurately ascertain which fire rescue agencies they will be providing training to and to which agencies their training participants belong.

**QUESTION 2:**

Does the Code prohibit a City employee who works part-time for a business which offers mandatory fire rescue training from providing such training to City fire rescue employees when that business is owned by another City employee?

**ANSWER 2:**

Under the facts submitted, and based on your assertion that none of the other exceptions to the contractual relationship prohibition apply, because the owner of the business is a City employee and his or her business cannot contract with the City to provide goods or services, the City employee who works part-time at this business cannot receive a part-time outside employment waiver, as the outside employer cannot contract with the City for goods or services. And, where the business contracts to provide goods or services to the County, or to another municipality, there would be no conflict to waive. As explained above, the Code generally prohibits any contractual relationship between the City and City employees.<sup>6</sup> This contract prohibition extends to all contracts or transactions between the City and the City employee, directly or indirectly, or the employee's outside employer or business unless one of the exceptions to the contractual relationship prohibition applies. An outside employer includes any business that employs you for compensation, and is not another government agency.<sup>7</sup>

**QUESTION 3:**

Does the Code prohibit a City employee who works part-time for a business which offers fire rescue training from providing such training to City fire rescue employees when that business is not owned by a City employee?

**ANSWER 3:**

As discussed in Answer 1, the Code prohibits any contracts between the City and the City employee or the City employee's outside employer or outside business unless one of the exceptions to the contractual relationship prohibition applies. Here, the City employee may be eligible for an outside employment waiver under §2-443(e)(5) of the Code, which establishes a process by which the contractual relationship prohibition is waived for employees. Under this subsection, the Code states that to be eligible for the outside employment, the City employee seeking the waiver cannot be involved with the contract in any way. In addition, the part-time employment cannot interfere with the performance of the City employee's job, and the City employee must comply with all rules regarding outside employment and receive written permission from his or her supervisor. Further, neither the City employee nor any relative can have participated in awarding or determining the requirements of the contract. The City employee must also complete a conflict of interest waiver form, submit the form to both their supervisor and Administrator to be reviewed and signed, and then submit the form to the COE.

The final waiver requirement states that the employee or any relative of the employee may not "work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract."<sup>8</sup> The Code does not define the term "department." However, the Florida Commission on Ethics has previously defined an employee's "department", for purposes of the Conflicting Employment or Contractual Relations provision, "as the lowest departmental unit within which his influence might reasonably be considered to extend."<sup>9</sup> Because the COE has the power to interpret the Code of Ethics, and also must consider the practical

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<sup>5</sup> RQO 14-003

<sup>6</sup> §2-443(d)

<sup>7</sup> §2-442

<sup>8</sup> §2-443(e)(5)a.

<sup>9</sup> §112.312(2), Florida Statutes; CEO 93-31; CEO 77-83; CEO 82-75; CEO 83-61

effect on the general functions of government, we adopt the Florida Commission on Ethics' definition of department.<sup>10</sup> Thus, under this definition, the term "department" as listed in §2-443(e)(5)(a), *Exceptions and waiver*, means those persons working directly within the lowest departmental unit (department, section or division) of that public entity that is specifically authorized to enforce, oversee, or administrator the subject contract. Personnel assigned to a county or municipal department, section or division specifically authorized to enforce, oversee, or administrator the subject contract, would not be able to waive this conflict of interest, and accept part-time outside employment with a vendor. This prohibition would also extend to all employees, supervisors, managers and administrators within a county or municipal government who have authority to modify or approve the subject contract, even where they are not assigned to this specific department, division or section.

Based on the facts here, any municipal or county employee who is involved with any contract with private training providers, whether that involvement is direct (enforcing, administering, or overseeing the contract) or indirect (having some influence over the content or types of training to be provided by a private company), is not eligible to waive this conflict of interest and cannot work as a part-time trainer for a municipal or county vendor providing such training. However, as long as he or she meets all of the waiver requirements as set forth in §2-443(e)(5), including not working directly within the section or division of West Palm Beach Fire Rescue or another City department that is specifically authorized to enforce, oversee, or administer the contract, the City employee who works part-time for a business which offers fire rescue training is not prohibited from providing such training to City fire rescue employees when that business is not owned by a City employee.

**FACTS:**

You are the Ethics Officer for the City of West Palm Beach. You are requesting this advisory opinion on behalf of the Fire Rescue Department. The City's fire rescue employees must complete mandatory fire rescue training. At least one Fire Rescue employee has an outside business which offers the mandatory fire rescue training and at least one City employee works part-time for that business. In addition, at least one City employee works part time for an outside employer which offers the mandatory fire rescue training. You have stated that none of the exceptions to the contractual prohibition applies to the facts here.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-442 and §2-443 of the Code:

**§2-442. Definitions.**

**Outside employer or business** includes:

- (1) Any entity, other than the county, the state, or any other regional, local, or municipal government entity, of which the official or employee is a member, official, director, or employee, and from which he or she receives compensation for services rendered or goods sold or produced, or
- (2) Any entity located in the county or which does business with or is regulated by the county in which the official or employee has an ownership interest.

**§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;

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<sup>10</sup> Section 2-258, *Powers and duties*, of the Palm Beach County Commission on Ethics Ordinance states in relevant part: "The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the: (1) Countywide Code of Ethics; (2) County Post Employment Ordinance; and (3) County Lobbyist Registration Ordinance."

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

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. 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

REVISED

May 6, 2016

Mr. Norm Ostrau, Ethics Officer  
City of West Palm Beach  
401 Clematis Street, 5<sup>th</sup> Floor  
West Palm Beach, FL 33401

Re: RQO 16-011  
Contractual Relationship

Dear Mr. Ostrau,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting on May 5, 2016.

**QUESTION 1:**

Does the Palm Beach County Code of Ethics (Code) prohibit a City of West Palm Beach (City) employee who owns an outside business which offers mandatory fire rescue training from providing such training to City fire rescue employees if (1) the City pays for the training directly or (2) City fire rescue employees pay for the training directly and are then reimbursed by the City?

**ANSWER 1:**

In general, the Code prohibits an employee, directly or indirectly, from entering into any contract or other transaction to provide goods or services to his or her public employer unless one of the exceptions to the contractual relationship prohibition applies.<sup>1</sup> This prohibition includes any contract or transaction between the public employer and the employee, the employee's outside business, or the employee's outside employer.<sup>2</sup> Even where another City fire rescue employee pays the City employee or his company for this training, and is later reimbursed by the City for this cost, an "indirect" contractual relationship would still be created. Under the Code, indirect contractual relationships are also prohibited. In addition, the Code prohibits the employees from using their official position to gain a special financial benefit for themselves or their outside employer or business.<sup>3</sup>

As the owner of the business, the City employee who has an outside business which offers the training is not eligible to receive an outside employment waiver, even where he may also be a part-time employee of this outside business.<sup>4</sup> The eligibility requirements for this waiver prohibit the employee from being involved with the contract between the business and the City in any way. As the owner of the business, the City employee would not be able to meet this requirement. Therefore, based on the fact that this employee cannot receive an outside employment waiver and on your assertion that none of the other exceptions to the contractual relationship prohibition apply, the City employee may not contract with the City to provide the training to City fire rescue employees. In addition, because indirect contractual relationships are prohibited, the City employee with an outside business which offers fire rescue training cannot circumvent the contractual relationship prohibition of the Code by accepting payment directly from a City fire rescue employee when the fire rescue employee will then be reimbursed for the training by the City. However, the Code does not prohibit the City employee from contracting with the County or with other municipalities, excluding the City of West Palm Beach, to provide fire rescue training to County or municipal fire rescue employees.<sup>5</sup>

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<sup>1</sup> §2-443(d), §2-443(e)

<sup>2</sup> Id.

<sup>3</sup> §2-443(a)

<sup>4</sup> §2-443(e)(5)

<sup>5</sup> RQO 14-003



The burden is on employees with the secondary employment to ensure that their secondary employment does not conflict with their City employment. Therefore, they have the ongoing responsibility to accurately ascertain which fire rescue agencies they will be providing training to and to which agencies their training participants belong.

**QUESTION 2:**

Does the Code prohibit a City employee who works part-time for a business which offers mandatory fire rescue training from providing such training to City fire rescue employees when that business is owned by another City employee?

**ANSWER 2:**

Under the facts submitted, and based on your assertion that none of the other exceptions to the contractual relationship prohibition apply, because the owner of the business is a City employee and his or her business cannot contract with the City to provide goods or services, the City employee who works part-time at this business cannot receive a part-time outside employment waiver, as the outside employer cannot contract with the City for goods or services. And, where the business contracts to provide goods or services to the County, or to another municipality, there would be no conflict to waive. As explained above, the Code generally prohibits any contractual relationship between the City and City employees.<sup>6</sup> This contract prohibition extends to all contracts or transactions between the City and the City employee, directly or indirectly, or the employee's outside employer or business unless one of the exceptions to the contractual relationship prohibition applies. An outside employer includes any business that employs you for compensation, and is not another government agency.<sup>7</sup>

**QUESTION 3:**

Does the Code prohibit a City employee who works part-time for a business which offers fire rescue training from providing such training to City fire rescue employees when that business is not owned by a City employee?

**ANSWER 3:**

As discussed in Answer 1, the Code prohibits any contracts between the City and the City employee or the City employee's outside employer or outside business unless one of the exceptions to the contractual relationship prohibition applies. Here, the City employee may be eligible for an outside employment waiver under §2-443(e)(5) of the Code, which establishes a process by which the contractual relationship prohibition is waived for employees. Under this subsection, the Code states that to be eligible for the outside employment, the City employee seeking the waiver cannot be involved with the contract in any way. In addition, the part-time employment cannot interfere with the performance of the City employee's job, and the City employee must comply with all rules regarding outside employment and receive written permission from his or her supervisor. Further, neither the City employee nor any relative can have participated in awarding or determining the requirements of the contract. The City employee must also complete a conflict of interest waiver form, submit the form to both their supervisor and Administrator to be reviewed and signed, and then submit the form to the COE.

The final waiver requirement states that the employee or any relative of the employee may not "work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract."<sup>8</sup> However, the Code does not define the term "department." Here, if "department" means an entire municipal or county fire-rescue department and all employees within, then any person employed by that public entity's fire rescue department would be prohibited from training other personnel from that same organization, unless they did so while on duty. However, most public entities do not have sufficient training staff to conduct all required first responder training and must rely on private companies to conduct much of this specialized training. Because first responder training is specific to their field, this training generally must be done by current or former first responders working part-time as trainers for these private companies. The nature of employment as any type of first responder requires that such training be completed by trainers with sufficient experience in these fields.

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<sup>6</sup> §2-443(d)

<sup>7</sup> §2-442

<sup>8</sup> §2-443(e)(5)a.

Further, in general, the best training is completed by personnel who understand and are familiar with the specific complexities, policies, and practices of each public entity.

Therefore, because the COE has the power to interpret the Code of Ethics, and also must consider the practical effect on the general functions of government, we define the term “department” as listed in §2-443(e)(5)(a), *Exceptions and waiver*, to mean only those persons working directly within the section or division of that public entity that is specifically authorized to enforce, oversee, or administrator the subject contract, such as the Administrator, managers, supervisors, or other employees who have direct authority over the subject contract.

Therefore, as long as he or she meets all of the waiver requirements as set forth in §2-443(e)(5), including not working directly within the section or division of West Palm Beach Fire Rescue or another City department that is specifically authorized to enforce, oversee, or administer the contract, the City employee who works part-time for a business which offers fire rescue training is not prohibited from providing such training to City fire rescue employees when that business is not owned by a City employee.

**FACTS:**

You are the Ethics Officer for the City of West Palm Beach. You are requesting this advisory opinion on behalf of the Fire Rescue Department. The City’s fire rescue employees must complete mandatory fire rescue training. At least one Fire Rescue employee has an outside business which offers the mandatory fire rescue training and at least one City employee works part-time for that business. In addition, at least one City employee works part time for an outside employer which offers the mandatory fire rescue training. You have stated that none of the exceptions to the contractual prohibition applies to the facts here.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-442 and §2-443 of the Code:

**§2-442. Definitions.**

**Outside employer or business** includes:

- (1) Any entity, other than the county, the state, or any other regional, local, or municipal government entity, of which the official or employee is a member, official, director, or employee, and from which he or she receives compensation for services rendered or goods sold or produced, or
- (2) Any entity located in the county or which does business with or is regulated by the county in which the official or employee has an ownership interest.

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

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. 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