



*HONESTY - INTEGRITY - CHARACTER*

**Palm Beach County**

**Commission on Ethics**

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**E-mail:**

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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

**Intake and Compliance Manager**

Gina A. Levesque

**General Counsel**

Christie E. Kelley

**Chief Investigator**

Anthony C. Bennett

**Investigator**

Abigail Irizarry

# *Agenda*

September 8, 2016 – 1:30 pm  
Governmental Center,  
301 North Olive Avenue, 12<sup>th</sup> Floor  
McEaddy Conference Room

Meeting will begin at 1:30pm  
Executive Session at 1:45pm  
Regular Agenda will resume at 3:00pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from July 7, 2016
- V. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 16-019
- VI. Items Pulled from Consent Agenda
  - a.
- VII. Proposed Advisory Opinions
  - a.
- VIII. Executive Session
  - a. C15-013
  - b. C15-028
  - c. C15-030
- 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**

**JULY 7, 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 – Absent  
Michael F. Loffredo  
Judy M. Pierman  
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 – None**

**IV. APPROVAL OF MINUTES FROM JUNE 2, 2016**

**MOTION to approve the June 2, 2016, minutes as presented. Motion by Judy Pierman, seconded by Michael Loffredo, and carried 4-0. Clevis Headley absent.**

**COMMISSION ON ETHICS – CONTINUED**

**RECESS**

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

**RECONVENE**

**At 2:18 p.m., the meeting reconvened with Chair Kridel, and Commissioners Loffredo, Pierman, and Shullman present. Clevis Headley absent.**

**V. EXECUTIVE SESSION**

**a. C15-026**

Chair Kridel read the following Public Report Finding No Probable Cause and Order of Dismissal, and the Letter of Instruction that was discussed during the executive session:

Complainant, Mark Bannon, Executive Director of the Palm Beach County Commission on Ethics, filed the above referenced complaint on December 4, 2015, alleging that Respondent, Desiree Lancaster, a City of Delray Beach employee, violated §2-443(d) of the Palm Beach County Code of Ethics when her outside business entered into contracts with her public employer.

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 July 7, 2016, Respondent and Advocate entered into a negotiated settlement wherein Respondent admitted to violating §2-443(d) of the Palm Beach County Code of Ethics and agreed to accept a Letter of Instruction. The negotiated settlement stipulated that probable cause existed to believe that Respondent violated §2-443(d) but that the violation was unintentional and that the public interest would not be served by proceeding with this complaint. After reviewing the negotiated settlement and all relevant documents associated with the case, the COE approved the negotiated settlement and issued a Letter of Instruction.

Therefore it is:

## V. – CONTINUED

ORDERED AND ADJUDGED that the complaint against Respondent, Desiree Lancaster, is hereby DISMISSED and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 7, 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 Final Order of Dismissal.)

Chair Kridel read the following Letter of Instruction:

Mark E. Bannon, Executive Director of the Palm Beach County Commission on Ethics (COE) (Complainant) filed the above-captioned complaint against Desiree Lancaster (Respondent), an employee of the City of Delray Beach, alleging a violation of the Palm Beach County Code of Ethics, specifically Article XIII, §2-443(d) (Contractual Relationships). The complaint alleges, in part, that Respondent's outside business entered into contracts with her public employer, the City of Delray Beach.

Facts:

This matter came to the attention of the PBC Commission on Ethics (COE) staff via a letter from Mr. Donald Cooper, city manager for the City of Delray Beach, stating that an audit revealed that Respondent was an employee of Phoenix Pressure Cleaning, LLC, which was a vendor of the City of Delray Beach. While the audit conducted by the City found information indicating Respondent is employed by Phoenix, the investigation by COE staff revealed that Respondent and her husband share a 100% ownership interest in the company.

Respondent is listed as the Registered Agent and a Managing Member for the company Phoenix Pressure Cleaning, LLC, within the Articles of Organization filed with the Florida Department of State.

## V. – CONTINUED

Her husband, Nathaniel Lancaster, is also listed as having an ownership interest in this company. No other officers were listed within the Articles of Organization documents. Together, Respondent and her husband have a 100% ownership interest in Phoenix Pressure Cleaning, LLC. During the investigation, Respondent stated that she was approached by a supervisor specifically requesting the pressure cleaning services from her company. Her husband subsequently secured the contractual job for the requested services. She stated that the first contract was in January 2014 to pressure clean one of the City fire stations. She also stated that there were other contracts to pressure clean another fire station and to pressure clean and paint the life guard towers at the City beach. In total, Respondent's outside business received \$12,071.54 from the City for services rendered.

Holding:

Sec. 2-443(d), Contractual relationships, states in relevant part:

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.

Sec. 2-442, Definitions, states in relevant part:

Outside employer or business includes:

(2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

## V. – CONTINUED

Sec. 2-260.3. Dismissal of complaints, of the Palm Beach County Commission on Ethics ordinance states in relevant part:

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal. (Emphasis added)

Although Respondent stated that she does not own any part of the business but that her husband owns the business, under Sec. 2-442, an employee's spouse is one of the listed individuals whose ownership interest is transferred to the employee. Therefore, Phoenix Pressure Cleaning, LLC was Respondent's outside business, and the contracts between the City and Phoenix Pressure Cleaning, LLC were prohibited. Additionally, the evidence also showed that Respondent and her outside business did not meet any of the exceptions to the contractual relationships provision.

In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of dismissal with this Letter of Instruction. The COE believes that the violation was unintentional and has determined that the public interest would not be served by proceeding further. However, Respondent is advised that the filing of Ethics Complaint C15-026, along with this Letter of Instruction, is to serve as notice that entering into a contract with her public employer is prohibited under the Code of Ethics, unless an exception applies. Respondent is therefore instructed to be more careful in the future to ensure that she follows the requirements of §2-443(d) to avoid any future enforcement action.

This Letter of Instruction is issued by the Palm Beach County Commission on Ethics in public session on July 7, 2016.

By: Michael S. Kridel, Chair

**V. – CONTINUED**

(CLERK'S NOTE: The clerk added the language as printed in the Letter of Instruction.)

**VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

**VI.a. Request for Opinion (RQO) 16-016**

**VI.b. Request for Opinion (RQO) 16-017**

**VI.c. Request for Opinion (RQO) 16-018**

**MOTION to accept the opinions as published. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 4-0. Clevis Headley absent.**

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

**VIII. PROPOSED ADVISORY OPINIONS – None**

**IX. EXECUTIVE DIRECTOR COMMENTS**

Mark E. Bannon, COE Executive Director, stated that:

- He and staff attended council meetings of municipalities to describe the services offered by the Commission on Ethics.
  - June 2016 presentations were held at the City of West Palm Beach, the Village of Palm Springs, and at Community Redevelopment Agencies of the cities of Lake Worth, Belle Glade, and Pahokee.
- Additional presentations were scheduled for the towns of Gulf Stream, Cloud Lake, Manalapan, Lantana, and South Palm Beach, and the Village of Golf.
- To date, 33 meetings among the 38 municipalities were attended or scheduled.
- He and COE General Counsel Christie Kelley conducted 12 ethics training sessions during the week of June 21, 2016, for employees and officials of the Town of Palm Beach.

**IX. – CONTINUED**

- Advertising for additional volunteer pro bono advocates was in progress within the Palm Beach Bar Association, the F. Malcolm Cunningham, Sr. Bar Association, and the Hispanic Bar Association.
- A new ethics training videotaping session was set for either July or August 2016 to incorporate new information.

**X. COMMISSION COMMENTS**

**X.A.**

**DISCUSSED:** Public Speaking.

Chair Kridel spoke at a meeting of the Palm Beach County chapter of the Florida Institute of Certified Public Accountants to provide a 12-month update of the COE's activities. He added that a slide presentation distinguished the differences between the Inspector General Office's and the COE's responsibilities.

**XI. PUBLIC COMMENTS – None**

**XII. ADJOURNMENT**

**At 2:33 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*

September 8, 2016

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Michael S. Kridel, *Chair*

Clevis Headley, *Vice Chair*

Michael F. Loffredo

Judy M. Pierman

Sarah L. Shullman

**Executive Director**

Mark E. Bannon

July 25, 2016

Mr. Martin Rothman  
Palm Tran Service Board  
3201 Electronics Way  
West Palm Beach, FL 33407

Re: RQO 16-019  
Charitable Solicitation/Misuse of Office

Dear Mr. Rothman,

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:**

As a member of the Palm Tran Service Board (PTSB), does the Palm Beach County Code of Ethics (Code) prohibit you from soliciting donations on behalf of the Palm Beach County Chapter of the National Federation of the Blind (NFB) of which you are the Vice President and Board Member?

**ANSWER :**

As an appointed official, you are prohibited from using your official position as an advisory board member to give a special financial benefit, not shared with similarly situated members of the general public, to a charitable organization, or other not for profit organization of which you are an officer or director.<sup>1</sup> Similarly, as an officer or director of a charitable or non-profit organization, you must abstain from voting and may not participate in the discussion on any matter that comes before your board that would result in a special financial benefit to that organization.<sup>2</sup>

In addition, Section 2-444(b)(1) of the Code specifically prohibits you from soliciting or accepting a gift valued at over \$100 from any vendor, lobbyist, or any principal or employer of a lobbyist who lobbies your advisory board or any county department that is subject to your board's authority. However, the Code has an exception for solicitations on behalf of non-profit charitable organizations. Section 2-444(h) permits you to solicit funds for a non-profit charitable organization from a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies your advisory board or any county department that is subject to your board's authority provided there is no quid pro quo or other special consideration given. In addition, a record of the solicitations from any vendor, lobbyist, or any principal or employer of a lobbyist who lobbies your advisory board or any county department that is subject to your board's authority must be maintained and submitted to the COE within 30 days of the event or if not solicited for an event, then within 30 days of the solicitation.<sup>3</sup>

Based on the information provided, the Code does not prohibit you from soliciting donations on behalf of NFB since NFB is a registered 501(c)(3) charitable organization. However, your participation in fundraising for NFB would need to be in your personal name without any reference to your official title or connection to your official

<sup>1</sup> §2-443(a)(1-7)

<sup>2</sup> §2-443(c)

<sup>3</sup> §2-444(h)(2)

position as a member of the PTSB. Lending your name and official title as a PTSB member to the NFB's fundraising effort would per se constitute using your appointed position to provide a special financial benefit to the NFB.<sup>4</sup> This applies directly to you and to anyone indirectly soliciting on your behalf. Based on the facts submitted, you are not using your official title or position as a member of the PTSB as you have purposely excluded any mention of your affiliation with the PTSB in the fundraising letters. Further, if you solicit or accept any donation in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the PTSB or of Palm Tran (the county department that is subject to PTSB's authority), you, or someone entrusted by you, must maintain a record of the solicitation and submit a log to the COE within 30 days of the event, or if no event is involved, within 30 days of the solicitation.<sup>5</sup>

**FACTS:**

You serve as an advisory board member for the Palm Tran Service Board (PTSB). PTSB is a committee of board members from the local community who oversee the bus service for fixed route and paratransit for Palm Beach County. The board works to ensure that quality service is provided to the Palm Beach County bus riders and the disabled persons in Palm Beach County. You are also the Vice President and a board member of the Palm Beach County Chapter of the National Federation of the Blind (NFB). NFB is a 501(c)(3) nonprofit organization as determined by the Internal Revenue Service. Last month, you began a letter writing fundraiser campaign. To date, you have mailed approximately eighty letters. You plan to mail 300 to 400 additional letters. The letters does not mention your affiliation with the PTSB, nor does it request a specific contribution amount. The letters are primarily being sent to Florida companies and a few individuals. You are overseeing this fundraising project because you are one of the members of the NFB that has some usable sight. You recognize that some of the companies are vendors of Palm Beach County, and you are aware that in accordance with the Code, you must maintain a charitable solicitation log.

**LEGAL BASIS:**

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

**Sec. 2-442. Definitions.**

**Advisory board** shall mean any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.

**Official or employee** means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

**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:

(7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

(c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through

<sup>4</sup> RQO 12-081

<sup>5</sup> §2-444(h)

(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).

**Sec. 2-444. Gift law.**

- (b) (1) No advisory board member, or any other person 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 vendor, lobbyist, or any principal or employer of a lobbyist, who lobbies the recipient's advisory board, or any county or municipal department as applicable that is subject in any way to the advisory board's authority, influence or advice.
- (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, or with any relevant provision within the rules of The Florida Bar. Inquiries regarding possible conflicts under state law or bar rules should be directed to the State of Florida Commission on Ethics or The Florida Bar.

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