



HONESTY - INTEGRITY - CHARACTER

Agenda

November 3, 2016 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor

Meeting will begin at 1:30pm
Executive Session at 1:35pm
Regular Agenda will resume at 3:30pm

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401
561.355.1915
FAX: 561.355.1904
Hotline: 877.766.5920

E-mail:

ethics@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

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from October 14, 2016
- V. Executive Session
 - a. C16-009
 - b. C16-006
 - c. C15-027
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 16-022
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 16-025 (Back-up to be provided prior to meeting)
- 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**

OCTOBER 14, 2016

**FRIDAY
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 – Absent
Sara L. Shullman

STAFF:

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

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

- III. INTRODUCTORY REMARKS**

Chair Michael Kridel stated that several items may be taken out of order.

- IV. APPROVAL OF MINUTES FROM SEPTEMBER 8, 2016**

MOTION to approve the September 8, 2016, minutes. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 4-0. Judy Pierman absent.

(CLERK'S NOTE: Item VI. was presented at this time.)

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. Request for Opinion (RQO) 16-020

VI.b. RQO 16-023

MOTION to approve the consent agenda. Motion by Sarah Shullman, seconded by Clevis Headley, and carried 4-0. Judy Pierman absent.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 16-021

Mark E. Bannon, COE Executive Director, explained that RQO 16-021 was not added to the consent agenda to allow discussion on the appearance of impropriety associated with the matter.

Commissioner Sarah Shullman noted that RQO 16-021 already contained a paragraph about the appearance of impropriety.

Christie Kelley, Esq., COE General Counsel, said that:

- A City of Delray Beach (Delray Beach) assistant attorney asked whether the West Atlantic Redevelopment Coalition (WARC) members were under the jurisdiction of the COE and the County's Code of Ethics.
 - The WARC was a nonprofit organization that advised the Delray Beach Community Redevelopment Agency and Delray Beach staff on redevelopment issues.
 - The WARC members hosted an annual gala to secure sponsorships from Delray Beach businesses.
 - One of Delray Beach's developers was a 2016 "Title Sponsor" of WARC's annual gala.

VIII.a. – CONTINUED

- The developer would be bringing a project before the WARC members and Delray Beach's Planning and Zoning Board (PZB).
- The WARC board members were not appointed by the Delray Beach Commission and did not fall under the jurisdiction of the COE and the County's Code of Ethics.
- One of the WARC members was on the Delray Beach PZB, which fell under the COE's jurisdiction.
 - As an official Delray Beach PZB member, the WARC member was prohibited from providing a special financial benefit to certain persons or entities, and she could not vote on an issue where those persons or entities would receive a special benefit.
 - The developer was not a WARC member and would not receive a special benefit if the WARC member voted on the developer's project.
 - Staff believed that no conflict of interest existed; however, an appearance of impropriety may exist because the WARC member served on the Delray Beach PZB.
- The advisory opinion letter stated that any official action taken by the WARC and the Delray Beach PZB member, including recommendations on the development project to the Delray Beach Commission, would violate the misuse of public office and employment section of the County's Code of Ethics if it was based on any unlawful quid pro quo or other benefit to the developer because of the developer's donation to the WARC.

Commissioner Shullman suggested changing the date of the advisory opinion letter because the COE meeting had been rescheduled.

MOTION to approve proposed advisory opinion letter RQO 16-021 as amended. Motion by Sara Shullman, seconded by Clevis Headley, and carried 4-0. Judy Pierman absent.

VIII. CONTINUED

VIII.b. Pages 9-12

IX. EXECUTIVE DIRECTOR COMMENTS

IX.a.

DISCUSSED: Hurricane Matthew.

Mr. Bannon said that he was grateful that everyone withstood Hurricane Matthew's potential damage.

IX.b.

DISCUSSED: Municipal Council Meetings.

Mr. Bannon said that the goal of attending at least one municipal council meeting for the 38 municipalities would be complete with the Town of Glen Ridge meeting.

IX.c.

DISCUSSED: Commendations.

Mr. Bannon thanked Gina Levesque, COE Intake and Compliance Manager, for working with the emergency response team at the County's Emergency Management Center. He also thanked Commissioner Shullman for her work with the State's emergency management team.

IX.d.

DISCUSSED: Volunteer Advocate Training.

Mr. Bannon said that volunteer advocate training was held on September 29, 2016, at the Vista Center. He said that the training was advertised but only one person attended. He added that staff could contact local attorneys to solicit new volunteers who could view the videotaped training session.

IX. – CONTINUED

IX.e.

DISCUSSED: COE Agreements.

Mr. Bannon said that the Delray Beach Housing Authority and the Delray Beach Community Redevelopment Agency renewed their agreements to be under the COE's jurisdiction for three additional years.

IX.f.

DISCUSSED: Office of Inspector General Lawsuit.

Mr. Bannon stated that he and Ms. Kelley attended oral agreements at the Fourth District Court of Appeals regarding the Office of Inspector General lawsuit.

IX.g.

DISCUSSED: Practical Guide for the Code of Ethics.

Mr. Bannon commented that the first draft of the Practical Guide for the Code of Ethics contained a few minor errors and that the guide would be published and distributed possibly within the next few weeks.

RECESS

At 1:42 p.m., the chair declared the meeting recessed for an executive session.

(CLERK'S NOTE: Item V. was presented at this time.)

V. EXECUTIVE SESSION

RECONVENE

At 2:48 p.m., the meeting reconvened, and at Chair Kridel's request for a roll call, Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo and Sarah Shullman were present.

V. – CONTINUED

V.a. C16-009 – Not presented

V.b. C15-030

Vice Chair Headley read the following Public Report Finding Probable Cause and Final Order of Dismissal as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on December 4, 2015, alleging that Respondent, Conor Devery, a City of Delray Beach employee, violated §2-443(d) of the Palm Beach County Code of Ethics by entering into contracts with the City through his outside business when his outside business did not meet any of the exceptions to the contractual relationships provision.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On October 14, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Affidavit, and the Report of Investigation from COE investigative staff and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and the Respondent, the Commission determined that there are reasonably trustworthy facts and circumstances to find probable cause exists and that the Respondent may have violated §2-443(d) of the Palm Beach County Code of Ethics. The Commission determined that the violation was inadvertent, unintentional or insubstantial and issued a Letter of Instruction.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Conor Devery, 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 October 14, 2016.

By: Michael S. Kridel, Chair

V.b. – CONTINUED

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding Probable Cause and Final Order of Dismissal.)

Vice Chair Headley read the following Letter of Instruction as discussed during the executive session:

Mark E. Bannon, Executive Director of the Palm Beach County Commission on Ethics (COE) (Complainant) filed the above-captioned complaint against Corey Devery (Respondent), an employee of the City of Delray Beach (City), 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 his public employer, the City of Delray Beach.

Facts:

This matter came to the attention of COE staff via a letter from City Manager Donald Cooper stating that an audit revealed that Respondent was an employee of First Response Training, LLC, a vendor of the City. While the audit conducted by the City found information indicating Respondent is employed by First Response Training, LLC, the investigation by COE staff revealed that Respondent and his wife share a 100% ownership interest in the company.

The company's Articles of Incorporation list Respondent as the Registered Agent and a Managing Member for First Response Training, LLC. Respondent's wife is also listed as having an ownership interest in this company. No other officers were listed within the Articles of Incorporation documents. Respondent stated that he and his wife have a 100% ownership interest in First Response Training, LLC. During the investigation, Respondent stated that he was approached by training officials from the City's Fire Department who specifically requested services from his company. Respondent subsequently secured multiple contractual jobs with the City and was paid for those jobs. Invoices provided by the City show that First Response Training, LLC was a vendor of the City and received a total of \$2,245 in payments from the City over a three year period.

V.b. – CONTINUED

However, due to the statute of limitations, the COE only has jurisdiction over the contract between the City and First Response Training, LLC that occurred on February 7, 2014, where payment for services rendered totaled \$560.

Holding:

Respondent's outside business (First Response Training, LLC) was a vendor of the City. Under 2-443(d) of the Code, the February 7, 2014 contract between the City and First Response Training, LLC was prohibited. Furthermore, the evidence also showed that the contract did not meet any of the exceptions to the contractual relationships provision. The COE is mindful of the fact Respondent was approached by training officials from the City's Fire Department who specifically requested services from his company.

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, inadvertent or insubstantial and has determined that the public interest would not be served by proceeding further. However, Respondent is advised that the filing of Ethics Complaint C15-030, along with this Letter of Instruction, is to serve as notice that entering into a contract with his 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 he 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 October 14, 2016.

Palm Beach County Commission on Ethics,

By: Michael S. Kridel, Chair

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

(CLERK'S NOTE: Item VIII.b. was presented at this time.)

VIII.b. RQO 16-024

Ms. Kelley said that:

- The City of Boca Raton (Boca Raton) recently received unsolicited offers to purchase land owned by Boca Raton.
- Boca Raton staff decided that all parties interested in purchasing the land could submit bids.
- Boca Raton's attorney believed that the cone of silence provision in the County's lobbyist registration ordinance only applied when the land sale involved a procurement or purchasing process and not when Boca Raton was selling the land.
- Staff believed that the cone of silence provision applied to both situations.
- The cone of silence's purpose was to ensure transparency throughout the competitive solicitation process and to prevent any improper influence of officials or other authorized employees.
- The County's lobbyist registration ordinance stated that the cone of silence provision prohibited any oral communication regarding a particular request for proposal, a request for qualification, and a bid. The prohibition also included any other competitive solicitation, which was not narrowly defined in the County's ordinance.
- Boca Raton requested that any parties interested in purchasing its land submit a best, last, and final written bid by October 21, 2016, between 4:30 p.m. and 5:00 p.m. Offers submitted after that date would not be considered.
- Boca Raton's approach was considered a competitive solicitation because it was a written bid with a deadline.
- Since Boca Raton was utilizing a competitive solicitation process, the cone of silence provision applied and would go into effect at the submission deadline.

VIII.b. – CONTINUED

Mr. Bannon said that:

- A contract still needed to be negotiated even when the cone of silence applied and a bidder's offer was accepted.
- Once a bid was awarded, negotiations between staff and the intended recipient of the bid were not within the cone of silence.
- Staff believed that the cone of silence should still apply to others involved in the bidding process because an agreement with the first bidder may not be reached, and Boca Raton staff may need to select another bidder.

Commissioner Shullman said that:

- The COE was required to follow the County's lobbyist registration ordinance and not the other ordinances from Miami-Dade and Broward counties, which were cited in the Boca Raton attorney's request for advisory opinion.
- She did not find any language in the County's ordinance limiting it to the procurement process.

Joni Hamilton, Boca Raton Senior Assistant Attorney, said that:

- Boca Raton's code of ordinances contained a provision for sale of real estate property stating that a competitive solicitation was considered a procurement process.
- The County established the cone of silence provision to prevent private entities and the government from having communications while engaging in sales.
- Broward and Palm Beach counties both referenced competitive solicitation in their ordinances, but Broward applied the term to the purchase of goods or services.

VIII.b. – CONTINUED

- The Palm Beach County’s ordinance, Section 2-355(e), pertained to purchases, although the cone of silence did not apply to small purchases.

Chair Kridel stated that he had seen requests for proposals applied to the procurement process but not to real estate transactions. He added that most organizations’ procurement process had language about “de minimis” exceptions or a “less than” threshold contained in their purchase provision.

Ms. Hamilton said that:

- The small purchase provision of the procurement process did not apply to Boca Raton.
- Boca Raton’s ordinance contained a provision that listed the manner and method for selling municipal property.
- Boca Raton’s request could be classified as the sale of real property pursuant to Boca Raton’s ordinance, Chapter 13.
- The County should not enforce an ordinance provision that did not apply to Boca Raton.
- The County’s lobbyist registration ordinance could be revised to state that the cone of silence also applied to the sale of real property.
- The Florida Legislature’s intent for the cone of silence was to address procurement.

Ms. Shullman stated that it was not the COE’s responsibility to determine the County’s intent but to make a determination after reviewing RQO 16-024 and the County’s Code of Ordinances.

MOTION to approve proposed advisory opinion letter RQO 16-024. Motion by Michael Loffredo, seconded by Sarah Shullman, and carried 4-0. Judy Pierman absent.

(CLERK'S NOTE: The numeric order of the agenda was restored.)

X. COMMISSION COMMENTS – None

XI. PUBLIC COMMENTS – None

XII. ADJOURNMENT

At 3:31 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

November 3, 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

October 28, 2016

Mr. Doug McGlynn, Battalion Chief
Palm Beach County Fire Rescue, Station 48
8560 Hypoluxo Rd
Lake Worth, FL 33461

Re: RQO 16-022
Conflict of Interest

Dear Mr. McGlynn,

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, a Palm Beach County Fire Rescue (PBCFR) employee who also serves as a PBCFR Unmanned Aircraft Systems Committee member, if you also work as an independent contractor for Stealth Air Corp (SAC), a drone manufacturer? Does the Palm Beach County Code of Ethics prohibit you from listing your PBCFR employment on your resume?

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits you from using your official position in any manner to give a special financial benefit to specified persons or entities, including to yourself.¹ Therefore, you may not use your official position as a PBCFR battalion chief to sell any SAC products or services as this would give a special financial benefit to you. Furthermore, Section 2-443(d) of the Code prohibits from entering into any contract or other transaction to provide goods or service with your public employer (Palm Beach County), unless an exception applies. This prohibition includes any contract or transaction between the county and you, directly or indirectly, or your outside employer or business. At this time SAC is not a county vendor. However, you are prohibited from selling any SAC products or services to the county in your personal capacity (which would make SAC a county vendor), unless an exception to this prohibition applies.² Sec. 2-443(e) of the Code provides five exceptions to the contractual relationship provision.

Section 2-443(e)(5) provides a process by which the contractual relationship prohibition may be waived for employees working part-time for a vendor of their public employer. However, based on the facts submitted, you would not be eligible for a part-time employment waiver because you would be working as an independent contractor for SAC.³ The outside employment waiver process is applicable when a public employee's outside employer has a contract for goods or services with his or her public employer. The Code defines an "outside employer" as any entity of which the public employee is "a member, official, director,

¹ §2-443(a)

² §2-443(d)

³ RQO 15-035

proprietor, partner, or *employee*.”⁴ Because you would not be an “employee” of SAC, the part-time outside employment waiver provision cannot be used in this situation, and the contractual relationship prohibition would preclude you from working as an independent contractor for SAC if they become a County vendor. The Code also has an emergency purchase exception and a sole source exception, both of which would not be applicable to your situation, as the purchase of a drone would not constitute an emergency purchase and SAC is not the only supplier of drones.⁵

In addition, the Code provides an exception for contracts entered into under a process of sealed, competitive bidding, where you are the lowest bidder.⁶ For this exception to apply, you cannot have participated in the bid specifications or determination of the lowest bidder, cannot have used your position in any way to influence the award, and you must have disclosed the nature of your interest in the business submitting the bid. If you fully complied with these requirements, the Code does not prohibit you from contracting, directly or indirectly, with the county. The Code also provides an exception when the total amount of the contracts or transactions in the aggregate does not exceed \$500 per calendar year.⁷ Therefore, if the total amount of the contract or transaction with the county does not exceed \$500, in the aggregate for the calendar year, then you are not prohibited from entering into the contract, directly or indirectly, with the county.

Thus, unless one of the last two exceptions applies (sealed bid/low bid or a contract for less than \$500 per year), you are prohibited from contracting with the county. However, you are not prohibited from contracting to sell SAC products or services to other municipalities, entities, and individuals in your personal capacity and on your own time. Further, you must still refrain from using your official position as a County employee to provide these services to any of these customers. Best practices would include refraining from using your official position, title, county email, identifying yourself as a PBCFR employee, or wearing your county uniform while promoting any Stealth Air Corp products.

Additionally, if none of the exceptions apply to your circumstances, it is important to note that if Stealth Air Corp ultimately becomes a county vendor by entering into any contracts with Palm Beach County, the Code prohibits you from continuing to work as an independent contractor for Stealth Air Corp, even if your sales as an independent contractor are only to municipalities or other entities or individuals. In addition, although you sit on the PBCFR Unmanned Aircraft Systems Committee, because you were not appointed to the committee by the Palm Beach County Board of County Commissioners, you are not considered an “official” under the Code.⁸ Therefore, §2-443(c), *Disclosure of voting conflicts*, does not apply to you. However, keep in mind that as a county “employee” you remain within the jurisdiction of the COE and the Code of Ethics in this capacity. Since you are a county employee, any vote by you as a member of the PBCFR Unmanned Aircraft Systems Committee recommending that PBCFR should purchase drones from Stealth Air Corp would be tantamount to using your official position to give a “special financial benefit” to your outside employer or business. Thus, §2-443(a)(4), *Misuse of public office or employment*, prohibits you from voting on such a matter.

Finally, the code does not prohibit you from outlining your professional experience by including your county employment and title on your resume. A resume is a general listing of a person’s relevant employment experience and education information. The mere listing of this information on a resume would not be a violation of the Code of Ethics.

⁴ §2-442

⁵ §2-443(e)(2), §2-443(e)(3)

⁶ §2-443(e)(1)

⁷ §2-443(e)(4)

⁸ §2-442

FACTS:

You are an employee of Palm Beach County, serving as a battalion chief for PBCFR. Earlier this year, you joined PBCFR's Unmanned Aircraft Systems Committee because of your interest, passion, and knowledge of how the drone interface can revolutionize the way PBCFR provides fire and emergency services to its customers.

You have also recently been offered to work as an independent contractor for Stealth Air Corp, an out-of-state drone manufacturer. SAC is not currently a vendor of Palm Beach County. The Unmanned Aircraft Systems Committee does not currently vote on any matters, formal or informal, because PBCFR does not have any contracts for drones at this time.

However, SAC may lobby or place a bid offer with PFCFR to supply drones for PFCFR. You stated that you believe that if SAC places a bid and the Unmanned Aircraft Systems Committee votes on whether to recommend SAC as a drone supplier, you must abstain from such a vote and avoid participating in the matter. You stated you are fully prepared to publicly disclose the nature of any potential conflict if one exists and would of course abstain from any activity that this commission deems unethical or unclear or even the slightest chance that a conflict of interest may exist.

SAC has also asked you to sit on their advisory board and to provide a resume outlining your past employment and expertise.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "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.

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal, regional, local, or municipal government entity, **of which the official or employee is a member, official, director, proprietor, partner, or employee**, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses; (emphasis added)

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;

- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).
- (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.
- (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 or her to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
- e. The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and
- f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the commission on ethics. The document shall contain written acknowledgment of compliance with the provisions of subsection (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor and chief administrative officer of the county or municipality. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment. (emphasis added)

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assume they are true for purposes of this advisory opinion. 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

November 3, 2016

Ms. Laurie Cohen, Village Attorney
Village of Wellington
12300 Forest Hill Blvd
Wellington, FL 33414

Re: RQO 16-025
Conflict of Interest

Dear Ms. Cohen,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on November 3, 2016.

QUESTION:

Does a Village of Wellington (Village) councilmember have a voting conflict that would prohibit him from voting on and participating in a matter where a client (Wantman Group, Inc.) of his outside employer is acting as an agent for Janus Real Estate, LLC (JRE) and will be presenting JRE's pending application for a conditional use permit for approval before the the Village Council?

ANSWER:

The Village councilmember is prohibited from using his official position to give a special financial benefit, not shared with similarly situated members of the general public, to a customer or client of his outside employer or to corruptly secure a special benefit for any person.¹ Similarly, Section 2-443(c), *Disclosure of voting conflicts*, requires the councilmember abstain from voting and not participate in any matter coming before the Village Council which would result in a special financial benefit, not shared with similarly situated members of the general public, to a customer or client of his outside employer. In the context of the Palm Beach County Code of Ethics (Code), financial benefit constitutes economic gain or loss.² The COE has previously opined that where the possibility of a financial benefit is remote and speculative, a prohibited conflict does not exist.³ A customer or client is defined as any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous 24 months, having an aggregate value greater than \$10,000.⁴

Because the councilmember's law firm has supplied in excess of \$10,000 worth of goods or services to the Wanton Group during the previous 24 months, the Wanton Group is a customer or client of the councilmember's outside employer. Thus, the councilmember is prohibited from using his official position to give a special financial benefit to Wantman Group. The councilmember is also required to abstain from voting on and not participate in any matter coming before the Village Council which would result in a special financial benefit to Wantman Group.

Here, if the JRE's conditional use permit application is approved by the Village Council, the possibility of a financial benefit to Wantman Group is neither remote nor speculative. Based upon the facts submitted, Wantman Group (the customer or client of councilmember's outside employer) is presenting the conditional use permit application before the Village Council. If the application is approved, Wantman Group will also be the engineering firm used by JRE to work on the proposed veterinary clinic project. Thus, because the councilmember's vote on the conditional use permit application will directly impact whether JRE can go forward on its proposed veterinary clinic project and whether Wantman Group will be employed by JRE to work on its project, there is a direct nexus between the councilman's vote and Wantman Group receiving a special financial benefit.

¹ §2-443(a)

² RQO 10-013

³ RQO 12-082; CEO12-19

⁴ §2-442

Therefore, the councilmember may neither participate in nor vote on this matter. In order to comply with the Code, he will need to publicly disclose the nature of the conflict before the Village Council discusses the matter, abstain from participating and voting on the matter, and file a state voting conflict form (8B).⁵

FACTS:

You are the Village Attorney for the Village of Wellington. You are requesting an advisory opinion on behalf of one of the Village Council councilmembers. The councilmember is a lawyer, employed by a law firm. The law firm has a client (Wantman Group, Inc.) which is an engineering and planning firm. The law firm has provided services to Wantman Group, Inc. in a value greater than \$10,000 over the past 24 months.

A property owner (Janrus Real Estate, LLC) is applying for a conditional use approval on its property to allow a veterinary clinic where one is not currently allowed. JRE has hired Wantman Group to be its agent, and for engineering and land planning services in connection with the application for the conditional use approval. A representative from Wantman Group presented the conditional use application before the Planning and Zoning Board, and a representative from Wantman Group will be presenting as the agent of the JRE before the Village Council on November 8.

Wantman Group is not working on a contingency basis for its involvement with the conditional use application. If the conditional use is approved, Wantman Group will be the engineer of record for the veterinary clinic project.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

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

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (5) A customer or client of the official or employee's outside employer or business;
- (b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other

⁵ §2-443(c)

manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assume they are true for purposes of this advisory opinion. 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

PROPOSED