



HONESTY - INTEGRITY - CHARACTER

Agenda

December 8, 2016 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor

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. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 16-026
 - b. RQO 16-027
- V. Items Pulled from Consent Agenda
 - a.
- VI. Executive Director Comments
- VII. Commission Comments
- VIII. Public Comments
- IX. 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.



Palm Beach County Commission on Ethics

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Michael S. Kridel, *Chair*
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Sarah L. Shullman

Executive Director
Mark E. Bannon

November 30, 2016

Mr. Price Patton
1020 Tamarind Road
Delray Beach, FL 33483

Re: RQO 16-026
Conflict of Interest

Dear Mr. Patton,

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 a conflict of interest arise for you if you purchase a historic property while serving as a member of the Delray Beach Historic Preservation Board (HPB)?

ANSWER:

Because you were appointed to the HPB by the City of Delray Beach City Commission, you are considered an "official" under the Code. The Palm Beach County Code of Ethic prohibits an official from using his official position to obtain a special financial benefit, not shared with similarly situated members of the general public, for specified persons or entities, including himself or his spouse, domestic partner, or a household member.¹ This prohibition includes not using your official position as a HPB member as a negotiating tool during the purchasing process. Similarly, an official is also prohibited from using his official position to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself or others.² Therefore, based on the facts provided, as long as you do not use your official position as an HPB member to obtain a special financial benefit or to corruptly secure any special benefit and further provided there is no "quid pro quo" or other benefit offered or accepted in exchange for the purchase of the property, the Code does not prohibit you from purchasing a historic property in the City of Delray Beach while serving as a member of the HPB.

If you decide to remain on the HPB after purchasing the historic property, the Code prohibits you from voting on an issue or participating in a matter that gives a special financial benefit to you or your spouse.³ In the future, if any changes to your historic property requires approval from the HPB, you are required to 1) disclose the nature of your conflict before your board discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) file a state voting conflict form (8B), submitting a copy to the board's clerk and to the COE.⁴ Here, in this context, "participate" means that you may not take part in any presentation or discussion before HPB regarding the historic property.

¹ §2-443(a)

² §2-443(b)

³ §2-443(c)

⁴ Id.

FACTS:

You serve on the Delray Beach Historic Preservation Board. The HPB is charged with reviewing all development, improvement, and redevelopment applications within a designated historic district of the City of Delray Beach. The board is made up of seven members, who are appointed by the City Commission for a term of three years. The HPB members must have knowledge, experience, and a personal or professional interest in historic restoration and preservation. Among their duties, the HPB can grant certain variances and can decide whether to approve Certificates of Appropriateness.

You stated that you will step down from the HPB if you purchase the property and need to appear before the board to seek any upgrades, waivers, or variances.

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.

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:
- (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;
- (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). The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

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

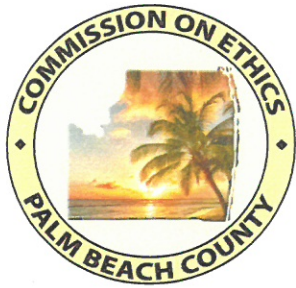
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannón,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

December 8, 2016

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Michael S. Kridel, *Chair*

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Sarah L. Shullman

Executive Director

Mark E. Bannon

November 22, 2016

Mr. Duane D'Andrea, Assistant Director
City of Delray Beach, Human Resources
100 NW 1st Avenue
Delray Beach, FL 33444

Re: RQO 16-027
Gift Law

Dear Mr. D'Andrea,

Your request for an expedited advisory opinion pursuant to Commission on Ethics rule of procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

QUESTION:

May City of Delray Beach (City) employees accept a discounted hotel rate offered by Fairfield Inn by Marriott in Delray Beach, Florida?

ANSWER:

The Palm Beach County Code of Ethics (Code) defines a gift as "anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration."¹ A discounted hotel rate is considered a gift. The Code prohibits City employees from accepting any gift with a value of greater than \$100 in the aggregate for the calendar year from any City vendor or any lobbyist or principal or employer of a lobbyist who lobbies the city.² If the hotel is a vendor, lobbyist, or a principal or employer of a lobbyist who lobbies the city, acceptance of a discount from the hotel over \$100 in the aggregate for the calendar year would be a violation of the Code.

If the Fairfield Inn by Marriott is not a City vendor, a lobbyist, or a principal or employer of a lobbyist who lobbies the city, then the above prohibition does not apply. However, depending on the amount of the discount, the City employees who accept the hotel discount may be required to report the gift.³ Under the Code, City employees identified by state law as "reporting individuals" must comply with the gift reporting requirements of §112.3148, Florida Statutes.⁴ All other City employees, those who are not state reporting individuals, must report gifts received with a value over \$100 in the aggregate on their annual Palm Beach County Gift Form.⁵ In determining the value of an allowable gift, the Code defers to Florida codes and statutes.⁶ Section 112.3148, Florida Statutes states that the value of a gift is determined using the "actual cost to the donor, less taxes and gratuities."⁷

¹ §2-444(g)

² §2-444(a)

³ §2-444(f)

⁴ Id.

⁵ Id.

⁶ §2-444(g); §112.3148, Florida Statutes; §34-13.310, Florida Administrative Code; RQO 11-022

⁷ §112.3148(7)(a)

Based on the facts provided here, the best available rate listed on the Fairfield Inn by Marriott's website for December 16, 2016 is \$152. The discounted rate offered by the hotel to City employees is \$89 per night. The gift amount is \$63. Therefore, employees who only stay one night at this discounted rate do not have to report this gift on their PBC Gift Form. However, employees must report the gift of the hotel discount if they accept additional discounted rates from this hotel if the aggregate value of the discounts exceeds \$100 during the fiscal year.

In addition, employees are reminded that §2-444(c) prohibits the offer or acceptance of a gift of any value in exchange for an official public action, legal duty performed or legal duty violated by an employee. This prohibition applies to any gift no matter the amount.

FACTS:

You are the Assistant Director of Human Resources for the City of Delray Beach. The City is hosting a Holiday Party for its employees. The party will take place on December 16, 2016. The Fairfield Inn by Marriott has offered to provide a discounted rate to City employees for attending the Holiday Party. The hotel has a block of rooms reserved for City employees for the night of the party at \$89 per room. The hotel will provide a trolley that will pick up employees at the hotel and bring the employee to the location of the party. After the party, the trolley will bring employees back to the hotel.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-444(a)(1), §2-444(f), and §2-444(g) of the Code:

Section 2-444. Gift law.

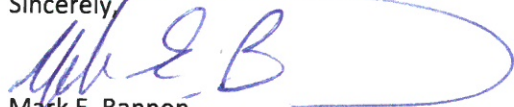
- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics.
- (2) *All other officials and employees who are not reporting individuals under state law.*
- b. All other gifts. All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift

may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

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