



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
Hotline: 877.766.5920
E-mail: ethics@pbcgov.org

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

January 12, 2017 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from November 3, 2016
- V. Approval of Minutes from December 8, 2016
- VI. Executive Session – C16-011
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 16-029
 - b. RQO 16-030
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Proposed Advisory Opinions
 - a. RQO 16-028
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. 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**

NOVEMBER 3, 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
Sara L. Shullman

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Anthony Bennett, Chief Investigator
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 there was a fairly dense executive session.

IV. APPROVAL OF MINUTES FROM OCTOBER 14, 2016

MOTION to approve the October 14, 2016, minutes. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 5-0.

RECESS

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

RECONVENE

At 3:44 p.m., the meeting reconvened, and at Chair Michael Kridel's request for a roll call, Chair Kridel, Vice Chair Clevis Headley, and Commissioner Michael Loffredo, Judy Pierman, and Sarah Shullman were present.

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

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. Request for Opinion (RQO 16-022)

MOTION to approve the consent agenda. Motion by Clevis Headley, seconded by Sarah Shullman, and carried 5-0.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 16-025

General Counsel Christie Kelley said that:

- This request for opinion was from the Village of Wellington (Wellington).
- The facts were as follows:
 - There was a Wellington council member who worked for an outside employer.
 - One of the outside employer's clients was Wantman Group.
 - A property owner was applying for a conditional use permit for a veterinary clinic in Wellington and hired Wantman Group to be its agent and to provide engineering services.

VIII.a. – CONTINUED

- Wantman Group was going to present the application before the Wellington council and if the conditional use permit was approved, the group would also work as the engineering firm on that project.
- Wellington's attorney asked the COE if the council member had a voting conflict that would prohibit him from voting on and participating in a matter involving Wantman Group.
- Staff concluded that there was a voting conflict and that the council member could not participate in or vote on this matter.
 - The code of ethics prohibited the council member from using his official position to provide a special financial benefit to a customer or client of his outside employer, and he needed to abstain from voting on or participating in any matter which would result in a special financial benefit to that customer or client.
 - There was a direct nexus between the council member's vote on the permit and Wantman Group receiving a special financial benefit because the council member's vote would directly impact whether or not the project would go forward and whether Wantman Group would be hired as the engineering firm to complete the project.
 - The special financial benefit was not remote or speculative.

Commissioner Sarah Shullman said that she agreed with the proposed opinion and asked why it was not on the processed agenda.

Ms. Kelley said that the proposed opinion was not processed because her office received the request at the beginning of the week, which did not provide enough time to complete it and submit it to the chair for consent. She added that the Wellington council vote would be on November 8 so the matter had to be heard at this meeting as a proposed opinion.

(This space intentionally left blank.)

VIII.a. – CONTINUED

MOTION to approve the proposed advisory opinion letter RQO 16-025. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.

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

V. EXECUTIVE SESSION

V.a. C16-009

Vice Chair Headley read the following Public Report 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 August 16, 2016, alleging that Respondent, Rashod Smith, a City of Delray Beach employee, violated §2-443(b) of the Palm Beach County Code of Ethics by waiving the facility rental application and fee for the Pompey Park Recreation Center for another City of Delray Beach employee when he did not have the authority to waive the application and fee.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. On November 3, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Affidavit 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 the violation was inadvertent, unintentional or insubstantial and issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Rashod Smith, 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 November 3, 2016.

V.a. – CONTINUED

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report 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 Rashod Smith (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(b){Corrupt misuse of official position). The complaint alleged, in part, that Respondent waived the rental application and fee for a City facility for another City employee when he did not have the authority to waive the application and fee.

Facts:

This matter came to the attention of COE staff via email from City Manager, Donald Cooper. The email contained information that Mr. Cooper obtained from a whistleblower. The whistleblower alleged that Respondent granted Tennille Decoste, a City employee unfettered access to a City facility during non-business hours by providing Ms. Decoste with keys and a security code to gain access into the building for a personal Thanksgiving Day dinner on November 26, 2015. The investigation revealed that Respondent did in fact provide Ms. Decoste with the keys and the security access code to gain entry into the City's Pompey Park Recreation Center. The investigation also revealed that Ms. Decoste requested to pay for the rental of the recreation center but that Respondent waived the rental application and \$222.60 rental fee even though he did not have the authority to do so.

(This space intentionally left blank.)

V.a. – CONTINUED

Holding:

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 CIS-030, along with this Letter of Instruction, is to serve as notice that he should be more careful in the future to ensure that he follows the requirements of §2-443(b) to avoid any future enforcement action.

This Letter of Instruction is issued by the Palm Beach County Commission on Ethics in public session on November 3, 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.)

V.b. C16-006

Vice Chair Headley read the following Public Report Finding Probable Cause 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 July 1, 2016, alleging that Respondent, Rowan Hughes, a former Palm Beach County employee, violated §2-443(a) and §2-443(b) of the Palm Beach County Code of Ethics by attempting to receive a discount for the repair of his personal vehicle.

(This space intentionally left blank.)

V.b. – CONTINUED

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On November 3, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Affidavit 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(a) and §2-443(b) of the Palm Beach County Code of Ethics. A final hearing will be set to determine whether any violation occurred.

Therefore it is:

ORDERED AND ADJUDGED that probable cause exists and the complaint against Respondent, Rowan Hughes, will be set for FINAL HEARING within 120 days to be coordinated between the parties.

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

By: Michael S. Kridel, Chair

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

V.c. C15-027

Vice Chair Headley read the following Public Report 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, Joseph Lang, 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.

V.c. – CONTINUED

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On November 3, 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 the violation was inadvertent, unintentional or insubstantial and issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Joseph Lang, 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 November 3, 2016.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report 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 Joseph Lang (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 alleged that Respondent's outside business entered into contracts with his public employer, the City of Delray Beach.

(This space intentionally left blank.)

V.c. – CONTINUED

Facts:

This matter came to the attention of 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 Lang at First Response CPR Services, a vendor of the City of Delray Beach. The investigation by COE staff revealed that Respondent is the sole owner of Lang at First Response CPR Services and has a 100% ownership interest in the company. Invoices and statements from Respondent and the City Manager showed that Lang at First Response CPR Services was a vendor of the City and received \$10,834.51 from the City for providing goods and services in 2014 and 2015. During the investigation, Respondent also stated that he was approached by one of the officials from the City's Fire Department who specifically requested products and services from Respondent's outside business. Respondent stated when the issue of having a contractual relationship with his public employer was brought to his attention, he immediately ceased providing any goods and services to the City.

Holding:

Respondent's outside business (Lang at First Response CPR Services) was a vendor of the City. Under §2-443(d) of the Code, Respondent's outside business was prohibited from entering into any contracts or transactions for goods or services with the City. Further, the contracts between Lang at First Response CPR Services and the City did not meet any of the exceptions to the contractual relationships provision listed in §2-443(e)(1-5). The COE is mindful of the fact Respondent was approached by an official from the City's Fire Department who specifically requested services from Lang at First Response CPR Services.

(This space intentionally left blank.)

V.c. – CONTINUED

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 05-027, along with this letter of Instruction, is to serve as notice that entering into a contract with his public employer is prohibited under the Palm Beach County 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 November 3, 2016.

By: Michael S. Kridel, Chair

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

IX. EXECUTIVE DIRECTOR COMMENTS

IX.a.

DISCUSSED: Council Meetings and the City of Westlake.

Executive Director Mark Bannon said that he and staff completed their goal of attending at least one council meeting in each municipality and that the newest municipality, the City of Westlake, requested a presentation from the COE. He added that while the Inspector General had jurisdiction over all newly created cities, the COE did not, and that he hoped to enter into a Memorandum of Understanding (MOU) with the City of Westlake.

IX.b.

DISCUSSED: New COE Handbook.

Mr. Bannon said that staff completed the final edits for the new handbook and it was in the publishing stage. He thanked John Johnson and his team from Palm Beach County Graphics for their assistance.

IX.c.

DISCUSSED: Corruption Discussion.

Mr. Bannon said that he met with Ivan Gorachenko, acting head of the Ukrainian National Reforms Council which was an anti-corruption group established in 2014. He said that they had an interesting discussion about the differences between their countries and corruption issues. He added that the National Reforms Council monitored not only corruption in government, but in general.

IX.d.

DISCUSSED: Delray Beach Housing Authority.

Mr. Bannon said that the Palm Beach County Board of County Commissioners approved the COE's MOU agreement with the Delray Beach Housing Authority. He added that the MOU would be in effect for another three years.

IX.e.

DISCUSSED: 10th Annual Ethics Seminar.

Mr. Bannon said that on November 4, he and Ms. Kelley would attend the 10th Annual Ethics Seminar at Palm Beach State College South Campus hosted by the Palm Beach County Planning Congress. He said that, generally, the seminar featured ethical issues in land use and was geared toward professional planners.

X. COMMISSION COMMENTS

X.a.

DISCUSSED: County Employees.

Chair Kridel said that the COE's role was critically important and aided County employees' education process to prevent them from inadvertently committing ethical violations.

(This space intentionally left blank.)

XI. PUBLIC COMMENTS – None

XII. ADJOURNMENT

At 4:05 p.m., the chair declared the meeting adjourned.

APPROVED: XX/XX/2016

Chair/Vice Chair

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

DECEMBER 8, 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 – Absent
Sarah L. Shullman

STAFF:

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

ADMINISTRATIVE STAFF:

Timothy Montiglio, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Michael Kridel stated that the meeting would be brief and the last one of the calendar year.

IV. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

IV.a. RQO 16-026

IV. – CONTINUED

IV.b. RQO 16-027 – pulled

MOTION to approve the consent agenda as amended. Motion by Sarah Shullman, seconded by Michael Lofreddo, and carried 3-0. Clevis Headley and Judy Pierman absent.

V. ITEMS PULLED FROM CONSENT AGENDA

IV.b. RQO 16-027

Commissioner Shullman said that she wanted to understand the difference between a discounted hotel room rate being offered as a gift and a discounted government room rate. She said that government employees who routinely take advantage of government employee discount rates could be in violation of the gift law. She added that although a group of government employees could negotiate a discount rate as a group and not as government employees, they could still be violating the gift law.

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

- The hotel room rate was only offered to the City of Delray Beach (City) employees on a specific night and considered a gift.
- The hotel communicated to the City that a special rate for City employees would be offered to them for a specific night.
- In a 2012 case where County firefighters were offered a discounted room rate at a City of Daytona Beach hotel, the gift law was upheld.

Mark E. Bannon, Commission on Ethics (COE) Executive Director said that:

- The government room rate should apply only to employees when on government business.
- The one-night difference in rates would not be enough to file a gift disclosure form, but was still considered a gift.
- Nongovernment agencies were not obligated to abide by the County's gift law.

IV.b. – CONTINUED

Commissioner Shullman said that using the government rate for employees on government business was not considered a gift.

Commissioner Kridel said that the rate in this case was \$63, which was below the \$100 gift law threshold and considered de minimis.

Mr. Bannon said that the City decided to forego the discount rate rendering the discussion moot.

MOTION to approve RQO 16-027 as published. Motion by Sarah Shullman, seconded by Michael Lofreddo, and carried 3-0. Clevis Headley and Judy Pierman absent.

VI. EXECUTIVE DIRECTOR COMMENTS

VI.a.

DISCUSSED: Executive Director Anniversary

Mr. Bannon said that December 8, 2016 marked his first anniversary as COE Executive Director and wanted to thank the commissioners and staff for their support.

VI.b.

DISCUSSED: New Practical Guide

Mr. Bannon said that the new Practical Guide to The Code of Ethics for Employees and Public Officials was now available. He added that Public Affairs created an online version of the guide that would be available on the COE Web site in the near future.

VI.c.

DISCUSSED: Training Video

Mr. Bannon said that the new Ethics Training Video would be available online on the COE Web site in one week. He thanked staff and Channel 20 staff for their help and support.

VI. – CONTINUED

VI.d.

DISCUSSED: Annual Report

Mr. Bannon said that the COE Annual Report would be presented at the January 12, 2017 meeting.

VI.e.

DISCUSSED: Governmental Ethics Conference

Mr. Bannon said that COE Intake and Compliance Manager Gina Levesque and Chief COE Investigator Anthony Bennett would be attending the annual Council on Governmental Ethics conference in New Orleans in one week.

VI.f.

DISCUSSED: Hearing Officer Listing

Mr. Bannon said that staff was coordinating with the Palm Beach County Bar, the Hispanic Bar, and the F. Malcolm Cunningham Sr. Bar associations to create a list of potential hearing officers. He said that the COE ordinance required the three bar associations to comprise a list of 10 volunteer hearing officers.

VII. COMMISSION COMMENTS

VII.a.

DISCUSSED: Commendation

Commissioner Shullman thanked Mr. Bannon for his smooth transition into the executive director role.

VII.b.

DISCUSSED: Hearing Officer Listing

Commissioner Shullman said that staff could also advertise for hearing officers with the Florida Association for Women Lawyers and that she would communicate that to the association.

VII.b. – CONTINUED

Mr. Bannon said that staff would also advertise with other professional associations.

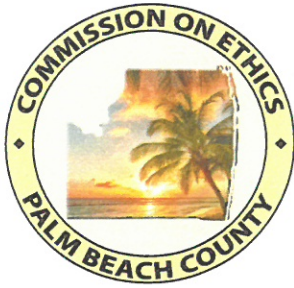
VIII. PUBLIC COMMENTS – None

IX. ADJOURNMENT

At 1:47 p.m., the chair declared the meeting adjourned.

APPROVED

Chair/Vice Chair



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

January 12, 2017

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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

December 19, 2016

Ms. Lynn Gelin, Assistant City Attorney
City of Delray Beach
200 N.W. 1st Avenue
Delray Beach, FL 33444

Re: RQO 16-029
Gift Law

Dear Ms. Gelin,

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 attendance by City of Delray Beach (City) public safety employees at an event hosted by Delaire Country Club as an expression of appreciation for the work of those employees violate the Palm Beach County Code of Ethics (Code)?

ANSWER:

The Code prohibits public employees from soliciting or accepting any gifts with a value of greater than \$100, in the aggregate for the calendar year, from a person or 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 their public employer.¹ In addition, Section 2-444(c) prohibits the solicitation of any gift from a vendor, lobbyist, principal or employer of a lobbyist if the gift is for the personal benefit of the employee, fellow employees, or the employee's relatives or household members. Further, a gift of any value may not be accepted as a quid pro quo for any official action, duty performed or duty violated.² Nor may a gift be accepted as a thank you gift or otherwise in appreciation for the performance of a specific official act by a public employee.³ However, where a gift is general in nature and not directed at specific acts of individual employees, depending upon the facts and circumstances, acceptance of such a gift may not be prohibited.⁴

Based on the facts submitted, because Delaire Country Club is not a vendor, lobbyist or principal or employer of lobbyists of the city, as long as there is no "quid pro quo" or special treatment or privileges given to Delaire Country Club by any City employee in exchange for hosting this event, the Code does not prohibit employees from attending. However, this gift from the country club may be reportable. If the value of the event for a city employee exceeds \$100, it must be disclosed in an annual gift report to be filed with the COE, or if the employee is a state reporting individual, the gift may need to be disclosed on a quarterly gift report filed with the State of Florida with a copy filed with the COE.⁵ In determining the value of a gift, the Code defers to Florida Codes and statutes.⁶ For the value of the food and beverages, Florida law provides that the value of a gift provided to several individuals

¹ §2-444(a)(1)

² §2-444(e)

³ RQO 11-008

⁴ RQO 11-103

⁵ §2-444(f)(1); §2-444(f)(2)b.

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

may be calculated on a pro rata basis among all of the invited individuals.⁷ In addition, with respect to the use of the golf course, the value of that portion of the gift would be the actual cost of a round of golf for a guest of a Delaire member. Therefore, based on the facts provided, although the Code does not prohibit employees from accepting this gift from the country club, if the value of gift to each employee exceeds \$100, then the gift must be reported.

FACTS:

You are the Assistant City Attorney for the City of Delray Beach. Delaire Country Club, a local private country club, wants to host an event for city police officers, firefighters, and other first responders. The purpose of this event is to show appreciation for the work of public safety employees throughout the year. Participants in the event will be provided with free food and beverages and a free round of golf at the country club.

You have advised that country club is not a vendor of the city. In addition, COE staff has determined that the country club does not lobby the city and is not a principal or employer of lobbyists who lobby the city.

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. 2-444. 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.
- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of: (1) An official public action taken or to be taken, or which could be taken; (2) A legal duty performed or to be performed or which could be performed; or (3) A legal duty violated or to be violated, or which could be violated by any official or employee.
- (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 indentified 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)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. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.
- (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,

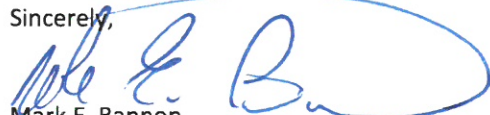
⁷ §112.3148(7)(i)

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.

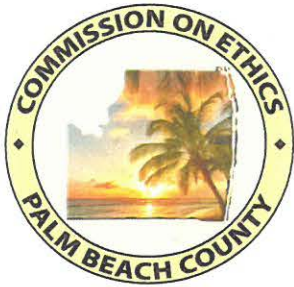
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

January 12, 2017

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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

January 6, 2016

Mr. John C. Randolph, Esquire
Town Attorney-Town of Palm Beach
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33401

Re: RQO 16-030
Conflict of Interest

Dear Mr. Randolph,

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

QUESTION:

Does a conflict of interest exist for Matthew Smith, a member of the Town of Palm Beach's Recreation Advisory Commission (RAC), where he also serves as an officer of a non-profit organization (Palm Beach Friends of Recreation) which is raising funds for a new community center in the town?

ANSWER:

As an advisory board member, Mr. Smith is an "official" under the Palm Beach County Code of Ethics.¹ As an official, he is prohibited from using his official position to give a special financial benefit to specified persons or entities, including any non-profit organization of which he is an officer or director.² Similarly, Mr. Smith is prohibited from voting on or participating in any matter that would result in a special financial benefit to a non-profit organization of which he is an officer or director.³

Based upon the facts provided here, because he is an officer of the Palm Beach Friends of Recreation, Mr. Smith is prohibited from voting on or participating in any matter coming before the RAC that would result in a special financial benefit to the Friends of Recreation. If any matter comes before the RAC where a recommendation from RAC to the Town of Palm Beach Town Council may result in a special financial benefit to Friends of Recreation, he must publicly disclose the nature of his conflict, file the required state disclosure form, and refrain from voting on and participating in the matter.⁴

Similarly, although the Palm Beach County Code of Ethics does not prohibit him from fundraising on behalf of Friends of Recreation, because he is an officer of the Friends of Recreation, Mr. Smith is also prohibited from using his name and official position as a RAC member on any fundraising effort on behalf of Friends of Recreation as this would per se constitute using his appointed position to give Friends of Recreation a special financial benefit. Therefore, any fundraising on behalf of Friends of Recreation would need to be in his name without reference to his RAC member status. In addition, if Mr. Smith solicits donations, directly or indirectly, in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist who lobbies the RAC or any town department that is subject in any way to RAC's influence or advice, he must maintain a record of those solicitations and submit a log to the

¹ §2-442

² §2-443(a)(7)

³ §2-443(c)

⁴ Id.

COE within 30 days of the event, or if no event, within 30 days of the solicitation.⁵ Further, Mr. Smith may not solicit donations from any person or entity with a pending application before the Town of Palm Beach, and he may not use any town staff or resources in the solicitation process.⁶ Additionally, Mr. Smith must take great care to not use his official position on the RAC to corruptly offer or give any quid pro quo or other benefit to any person in exchange for supporting Friends of Recreation.

FACTS:

You are the Town Attorney for the Town of Palm Beach. You are requesting an advisory opinion on behalf of Matthew Smith. Matthew Smith serves on the Recreation Advisory Commission for the Town of Palm Beach. The RAC is strictly an advisory commission to the Town of Palm Beach Town Council. RAC consists of seven members serving three year terms, appointed by the Town Council. RAC acts in an advisory capacity and makes recommendations to the Town Council on matters relating to the town's recreation programs and facilities.

He is also an officer of the Palm Beach Friends of Recreation, a 501(c)(3) non-profit organization. Friends of Recreation is attempting to raise funds to match a grant it received from a Mandel Foundation grant to renovate the Palm Beach Community Center.

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:
- (5) 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 (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).

⁵ §2-444(h)(2)

⁶ §2-444(h)(1,3)

Sec. 2-444. Gift law.

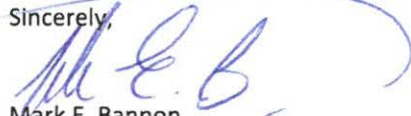
(h) Solicitation of contributions on behalf of a non-profit charitable organization.

- (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

January 12, 2017

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

Re: RQO 16-028
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 on January 12, 2017.

QUESTION:

Is Councilman Napoleone prohibited from participating in and voting on a special use permit, where the Wantman Group, Inc. (Wantman), a client of the councilman's outside employer, will be presenting the permit application to the Village of Wellington Village Council on behalf of a property owner but will not be performing any other services for the property owner after the presentation?

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits Councilman Napoleone from using his official position in any way when he knows or should know with the exercise of reasonable care that it would result in a special financial benefit to a client or customer of his outside employer.¹ Councilman Napoleone is also prohibited from participating in or voting on a matter to give a special financial benefit to a client or customer of his outside employer.² Since his outside employer has supplied services in excess of \$10,000 over the previous 24 months to Wantman, Wantman is a customer or client of Councilman Napoleone's outside employer.³

The issue here is whether Wantman will be receiving a special financial benefit from the councilman's vote. Financial benefit, in the context of the Code of Ethics, constitutes economic gain or loss.⁴ Under state statute, in evaluating a potential conflict of interest, the degree to which there is uncertainty at the time of the vote as to whether there would be any economic gain or loss to the prohibited person or entity must be considered.⁵ To constitute a prohibited voting conflict, the possibility of an economic gain or loss must be direct and immediate, rather than remote and speculative.⁶ Where the economic gain or loss would require many steps or be subject to contingencies, any gain or loss is remote and speculative.⁷ Where any gain or loss is remote and speculative, a special financial benefit does not exist.⁸

Based on the facts presented, there is uncertainty as to whether there would be any economic gain or loss to Wantman from the vote on the special use permit, thus, any financial benefit that Wantman may receive is remote and speculative. As stated in the facts provided, Wantman will not be the engineering firm used by the property

¹ §2-443(a)

² §2-443(c)

³ §2-442

⁴ RQO 10-013

⁵ 112.3143(1)(d), Florida Statutes

⁶ CEO 85-77 (school board member was not prohibited from voting on matters relating to the use of school district property where he owned a clothing store near the site of the proposed school complex because it would be purely a matter of speculation and conjecture on our part to conclude that the member's business would derive any special gain)

⁷ RQO 12-063

⁸ CEO 14-3

owner if the application is approved. Further, Wantman is not working on a contingency basis, and is only being paid for its land design services. Therefore, the vote on the special use permit will not affect whether Wantman is paid by the property owner or how much Wantman is paid by the property owner. Whether there is any financial benefit to Wantman beyond their earned payment for land design services by the passage of this special use application being brought to Village Council by Wantman, such as any potential enhancement to their business reputation, is at best remote and speculative. Therefore, based on the facts presented here, any special financial benefit to Wantman is neither direct nor immediate. Because the vote has no direct and immediate financial benefit to Wantman, Councilman Napoleone is not prohibited from participating in and voting on the special use permit which Wantman will be presenting on behalf of a property owner.

However, Councilmember Napoleone should be aware that even though there may be no per se prohibited conflict of interest, there exists an "appearance of impropriety" anytime he votes on matters brought before Village Council by Wantman Group, or any customer or client of his outside employer, even where any benefit to that customer or client is likely remote and speculative.

FACTS:

You are the Attorney for the Village of Wellington. You are requesting an advisory opinion on behalf of Councilmember Napoleon. An engineering and land planning firm, the Wantman Group, Inc. (Wantman), is a client of Councilman Napoleone's outside employer and has paid more than \$10,000 in legal fees over the past 24 months. The Village Council has an item coming up on its agenda in January for which Wantman Group is the agent of record for purposes of obtaining a special use permit.

In November 2016, you asked if Councilman Napoleone had a voting conflict that would prohibit him from voting on and participating in a matter where Wantman Group, Inc., a client of his outside employer, would be presenting a property owner's pending application for a conditional use permit before the Village council and would be serving as the engineering firm if the application was approved. The Commission opined that Councilman Napoleone would have a voting conflict because there was a direct nexus between the councilman's vote and Wantman Group receiving a special financial benefit. In that case, because the councilmember's vote on the conditional use permit application would directly impact whether JRE could go forward on its proposed veterinary clinic project and thus whether Wantman Group would be employed by JRE to work on its project, the possibility of a financial benefit to Wantman Group was determined to be not remote or speculative.

Unlike the fact pattern that the Commission addressed in that instance, in this case Wantman has been hired by the property owner only to obtain the required land use approvals and will not be hired to perform any of the engineering work if the special use permit is ultimately approved. Wantman is not working on a contingency basis and is only being paid by the property owner for land design services.

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.

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

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