



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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Commissioners

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

Executive Director

Mark E. Bannon

Intake and Compliance Manager

Gina A. Levesque

General Counsel

Christie E. Kelley

Chief Investigator

Anthony C. Bennett

Investigator

Abigail Irizarry

Agenda

March 2, 2017 – 9:00 am
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

C-16-006 FINAL HEARING TO BEGIN IMMEDIATELY FOLLOWING PUBLIC COMMENT (APPROXIMATELY 9:30 A.M.)

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Minutes
 - a. January 12, 2017 meeting
 - b. February 2, 2017 meeting
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 17-002
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Executive Director Comments
- VIII. Commission Comments
- IX. Public Comments
- X. Final Hearing C16-006
- XI. 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**

JANUARY 12, 2017

**THURSDAY
1:31 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

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

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
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 two separate COE meetings would take place today.

IV. APPROVAL OF MINUTES FROM NOVEMBER 3, 2016

MOTION to approve the November 3, 2016, minutes. Motion by Judy Pierman, seconded by Michael Loffredo, and carried 4-0. Clevis Headley absent.

V. APPROVAL OF MINUTES FROM DECEMBER 8, 2016

MOTION to approve the December 8, 2016, minutes. Motion by Michael Loffredo, seconded by Sarah Shullman, and carried 4-0. Clevis Headley absent.

VI. EXECUTIVE SESSION – C16-011 – Postponed

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. Page 3

VII.b. RQO 16-030

VIII. ITEMS PULLED FROM CONSENT AGENDA

VIII.a. RQO 16-030

PUBLIC COMMENT: John Randolph.

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

- Misuse of public office or employment under Section 2-443(a)(7) of the Palm Beach County Code of Ethics (Code) included someone who was an officer or director of a charitable nonprofit organization.
- If Matthew Smith was not an officer or director of the Palm Beach Friends of Recreation (PBFR), then Section 2-443(a)(1) through (7) would not apply.
- Section 2-443(c) would prohibit Mr. Smith from participating in, or voting on, any matter that had a special financial benefit for anyone described in Section 20443(a)(1) through (7).
- Mr. Smith should analyze every PBFR matter that came before him as a member of the Town of Palm Beach's Recreation Advisory Commission (RAC) to determine if PBFR would get a special financial benefit.

VIII.a. – CONTINUED

- The COE could issue an advisory opinion letter to Mr. Smith if a PBFR matter was coming before RAC.

Mark Bannon, COE Executive Director, explained that:

- Mr. Smith held two separate positions by being a member of RAC and PBFR.
- Mr. Smith could continue his RAC duties; however, when questions were asked or votes were taken on PBFR matters, he could not participate if it financially benefited PBFR.
- When soliciting for PBFR funds, Mr. Smith could not personally use his RAC title or use his RAC title on letterhead.
- RQO 16-030 did not address a prohibition against Mr. Smith soliciting PBFR funds from anyone who had a pending application before the Palm Beach Town Council (Council).

Ms. Kelley clarified that when soliciting PBFR funds, Mr. Smith should ask whether someone was a lobbyist or had a pending application with the Council.

MOTION to approve consent agenda item RQO 16-030. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 4-0. Clevis Headley absent.

VII.a. Request for Opinion (RQO) 16-029

MOTION to approve consent agenda item RQO 16-029. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 4-0. Clevis Headley absent.

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IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 16-028

Ms. Kelley stated that:

- The Village of Wellington (Village) attorney asked whether a Wellington councilman was prohibited from participating in, and voting on, a special-use permit application that was being presented by the Wantman Group, a client of the councilman's outside employer, on behalf of a property owner.
- Staff submitted that:
 - Any potential special financial benefit would be remote and speculative.
 - Voting on the permit application had no direct or immediate impact on giving the Wantman Group a special financial benefit; therefore, the councilman was not prohibited from voting on the matter.
 - No conflict of interest or Code violation existed, but staff believed that there was an appearance of impropriety whenever the Wantman Group or any other client of the councilman's outside employer appeared before the Village Council.
- In an unrelated advisory opinion, the Wantman Group could have received a special financial benefit based on a vote to perform engineering work.

Mr. Bannon clarified that the councilman was not required to complete a disclosure form because no financial conflict of interest existed; however, the Village may require disclosure even without a financial benefit.

Commissioner Sarah Shullman suggested adding language that any councilperson facing a similar situation should ensure that local code requirements regarding conflicts of interest were met.

Ms. Kelley clarified that "appearance of impropriety" language appeared in past advisory opinion letters when staff believed that it existed.

Mayor Kridel suggested adding the word, "may" to the sentence reading: "there exists an 'appearance of impropriety.'"

IX.a. – CONTINUED

Mr. Bannon said that he believed that an individual's title and/or name, as opposed to just a title, was used in past advisory opinion letters. He added that advisory opinion letters were meant for general application; however, RQO 16-028 applied to a specific councilmember.

MOTION to approve advisory opinion letter RQO 16-028 as amended to include the change as discussed. Motion by Sarah Shullman, seconded by Judy Pierman, and carried 4-0. Clevis Headley absent.

X. EXECUTIVE DIRECTOR COMMENTS

X.A.

DISCUSSED: Ethics Training Video/DVDs, COE Annual Report, and C13-006.

Mr. Bannon stated that new ethics training video was uploaded to the COE Web site in December 2016 and that the DVDs were being created. He noted that the COE 2016 annual report would not be presented until February 2017 and that the C13-006 prehearing conference would be held after today's meeting adjourned.

XI. COMMISSION COMMENTS – None

XII. PUBLIC COMMENTS – None

XIII. ADJOURNMENT

At 2:07 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

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

FEBRUARY 2, 2017

**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
Sarah 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

RECESS

At 1:31 p.m., the chair declared the meeting recessed for an executive session.

IV. EXECUTIVE SESSION

RECONVENE

At 2:35 p.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman present.

IV.a. C16-008

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

Complainant, Kelvin Bledsoe, filed the above referenced complaint on August 3, 2016, alleging that Respondent, Kathryn McNealy, Palm Beach County Community Services Department (CSD) employee, violated §2-443(b) of the Palm Beach County Code of Ethics by using her official position to manipulate the times sheets of two CSD employees.

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 February 2, 2017, the Commission conducted a hearing and reviewed the Report of Investigation and the Probable Cause Recommendation submitted by the COE Advocate. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore, it is:

ORDERED and ADJUDGED that the complaint against respondent, Kathryn McNealy, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on February 2, 2017.

By: Michael S. Kridel, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Order of Dismissal.)

IV.b. C16-010

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

Complainant, Jessica Hinnars, filed the above referenced complaint on August 31, 2016, alleging that Respondent, Shelly Petrolia, City of Delray Beach City Commissioner, violated §2-443(c) of the Palm Beach County Code of Ethics by nominating a customer or client of Respondent's outside business to the City of Delray Beach Site Plan Review and Appeals Board.

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 February 2, 2017, the Commission conducted a hearing and reviewed the Report of Investigation and the Probable Cause Recommendation submitted by the Coe Advocate. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore, it is:

ORDERED AND ADJUDGED that the complaint against respondent, Shelly Petrolia, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on February 2, 2017.

By: Michael S. Kridel, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Order of Dismissal.)

V. PROCESSED ADVISORY OPINIONS (Consent Agenda)

V.a. Request for Opinion (RQO 17-001)

V.b. RQO 17-003

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

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. EVIDENTIARY STANDARDS REVIEW

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

- The lowest evidentiary standard that the COE could use was legal sufficiency for the filing of a complaint.
- For legal sufficiency to exist, the person must be under the jurisdiction of the COE; and the alleged actions, if valid, must constitute a violation of the COE's Code of Ethics.
- The next evidentiary standard involved probable cause hearings.
- Probable cause existed where there were reasonably trustworthy facts and circumstances that warranted proceeding to a final hearing.
- The third evidentiary standard was clear and convincing evidence, which would be applied to the upcoming final public hearing.
- Clear and convincing evidence was precise, explicit, lacked confusion, and possessed such weight that it produced a firm belief or conviction without hesitation about the matter in issue.
 - The clear and convincing evidence was a medium or intermediate-level evidentiary standard.
 - The standard required more proof than a preponderance of the evidence but less proof than beyond a reasonable doubt.
 - The Fourth District Court of Appeal described the clear and convincing standard as follows:

The clear and convincing evidence requires that the evidence must be found to be credible. The facts to which the witnesses testify must be distinctly remembered. The testimony must be precise and explicit, and the witness must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction without hesitancy as to the truth of the allegations sought to be established.

VIII. 2016 ANNUAL REPORT

Mark Bannon, COE Executive Director, said that:

- The front and back covers of the 2016 annual report featured photographs depicting the county's western communities.
- The COE's mission statement remained unchanged since the COE's inception.
- The COE had jurisdiction over three ordinances:
 - the Palm Beach County Code of Ethics (Code), which applied to all County and municipal officials and employees;
 - the Lobbyist Registration Ordinance, which applied countywide except for three municipalities with a similar ordinance; and
 - the Post Employment Ordinance, which applied to County officials and employees after leaving their positions.
- The COE's most important mission was to teach people how to understand the Code.
 - The majority of violations were found to be unintentional.
 - Approximately 400 live presentations were conducted.
 - The updated COE training video was uploaded to the COE's Web site, youtube.com, and was available in DVD format.
 - The Practical Guide to Code of Ethics handbook was recently published, and staff was distributing it to municipalities and throughout the county.
- The COE decided 30 advisory opinions in 2016.
 - The online database, which was searchable by subject matter, contained 390 advisory opinions from the past six years.

VIII. – CONTINUED

- Inquiries that did not lead to complaints were not published on the Web site but were still available to the public.
- The COE monitored and reviewed County and municipal training requirements.
- Ethics training was available to lobbyists and vendors; however, the Lobbyist Registration Ordinance did not require them to take the training.
- Staff attended at least one municipal meeting of the 38 existing municipalities with the exception of the City of Westlake, which was outside the COE's jurisdiction.
- Staff spoke about the COE at approximately 50 private and public events.
- The COE maintained a strong social media presence via Twitter and Facebook.
- There were 12 sworn complaints in 2016 with five still pending.
- Thirteen pending complaints from 2015 were carried over to 2016; two of which were still pending.
- There were 21 inquiries with 11 pending. One inquiry from 2015 was still pending.
- Of the 10 probable cause hearings, four were legally sufficient with no probable cause, two were legally sufficient with probable cause but were dismissed, and four had probable cause but were dismissed with letters of instruction. Three probable cause hearings were in abeyance because criminal charges were pending, one was set for final hearing, and two were determined during today's executive session.
- The COE's budget for fiscal year 2015-2016 was \$578,227, of which \$520,000 was expended. The COE has never exceeded its allotted budget.

VIII. – CONTINUED

- Conflict of interest or misuse of office were the most prevalent types of advisory opinions.
 - Twelve advisory opinions involved conflict of interest or misuse of office and four involved voting conflicts.
 - Of the 30 requested advisory opinions, 15 were from municipalities, six were from advisory boards, seven were from the County, one was from a vendor, and one was from a special district.
- 50 percent of the 2016 complaints involved corrupt misuse; 25 percent involved misuse of office, and 5 percent involved voting conflicts.
- 58 percent of complaints were from municipalities; 27 percent involved the County, and 15 percent were from entities, such as vendors, lobbyists, or one of the special districts.
- A complaint process diagram was included in annual reports to illustrate the steps that typically followed the filing of sworn complaints.

Chair Kridel noted that his professional designation was CFC and not CFA, as reflected on page 8 of the annual report.

IX. EXECUTIVE DIRECTOR COMMENTS

IX.a.

DISCUSSED: Ethics Training.

Mr. Bannon said that staff was distributing copies of the ethics training DVD to municipalities and informing them that ethics training was available on the COE Web site. He thanked the County's Graphic Department and PBTv Channel 20 for their help with ethics training projects.

IX. – CONTINUED

IX.b.

DISCUSSED: Ethics Awareness Month.

Mr. Bannon said that on March 14, 2017, at 9:30 a.m., the Board of County Commissioners would present a proclamation declaring April 2017 as Ethics Awareness Month.

IX.c.

DISCUSSED: Top 10 Ethics Rules.

Mr. Bannon said that he spoke with Assistant County Administrator Todd Bonlarron about improving County government communications and that the top 10 ethics rules would be a good poster to distribute among the various County buildings.

IX.d.

DISCUSSED: Regional Ethics Bowl.

Mr. Bannon noted that he, Ms. Levesque, and Ms. Kelly participated as judges and moderators at the January 28, 2017, Regional Ethics Bowl. He explained that students debated ethical issues and that Atlantic High School's two teams placed first and second among the 12 teams that competed.

XI. COMMISSION COMMENTS

XI.a.

DISCUSSED: Commendations.

Commissioner Shullman thanked staff members for the 2016 annual report and for their accomplishments during 2016. She noted that staff fielded approximately 772 calls.

Commissioner Pierman commended staff on the 2016 annual report.

Mr. Bannon said that 200 copies of the report were ordered for the municipalities.

XI. – CONTINUED

Vice Chair Headley commended staff members for their outstanding work during 2016.

Chair Kridel said that he agreed with the commendations and that he also wanted to acknowledge the COE members' dedication.

XI.b.

DISCUSSED: March 2, 2017, Final Public Hearing.

Commissioner Shullman inquired whether the March 2, 2017, final public hearing had any updates regarding motions and exhibit lists.

Ms. Levesque said that an update would be available February 3, 2017.

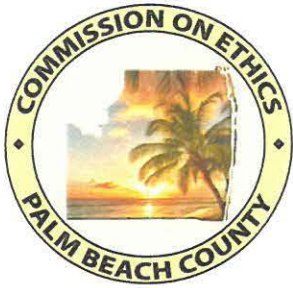
XII. PUBLIC COMMENTS – None

XIII. ADJOURNMENT

At 2:59 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Honesty - Integrity - Character

Commissioners

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

Executive Director

Mark E. Bannon

February 27, 2017

Donald Thomas, District Captain
Palm Beach County Fire Rescue, Station 73
525 SW 2nd Street
Belle Glade, FL 33430

Re: RQO 17-002
Outside Employment

Dear Captain Thomas,

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

QUESTION:

As an employee of Palm Beach County Fire Rescue (PBCFR), would a conflict of interest arise for you if you also work as an independent contractor for Schaeffer's Specialized Lubricants and sell the Schaeffer's products to NAPA Auto Parts (NAPA), a Palm Beach County vendor?

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 district captain in any way to sell the Shaeffer's products or services to anyone as this would constitute using your official position to give a special financial benefit to yourself. 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 or selling Shaeffer's products.

In addition, you are prohibited from entering into any contract or other transaction, directly or indirectly, to provide goods or service with your public employer (Palm Beach County), unless an exception applies.² You are also prohibited from working as an independent contractor for a company who contracts with Palm Beach County (a vendor).³ Therefore, you are prohibited from promoting or selling Shaeffer's products to the county because if Shaeffer's becomes a county vendor, then you would be prohibited from continuing to work as an independent contractor for Shaeffer's, even if your sales as an independent contractor would only be to municipalities or other entities or individuals.⁴ As such, you have an ongoing responsibility to confirm that Shaeffer's has not become a vendor of the county without your knowledge.

Further, the Code prohibits you from entering into any contractual relationships with a vendor of Palm Beach County if you would be providing goods and services to the county through that contract.⁵ This would create an indirect contract between you and your public employer and violate Sec. 2-443(d) of the Code. Based on the facts provided here, you would like to promote and sell Shaeffer's products to NAPA, a county vendor. If Shaeffer's enters into any contracts with NAPA, Shaeffer's would be a vendor of NAPA and not a vendor of the county. However, you would

¹ §2-443(a)

² §2-443(d)

³ RQO 16-022

⁴ Id.

⁵ RQO 10-038

be prohibited from promoting or selling Schaeffer's products to NAPA (a county vendor) if the contract between NAPA and Schaeffer's will solely be for products that NAPA will use to fulfill a contract that it has with the county, as this would constitute a prohibited indirect contract with NAPA.⁶

FACTS:

You are a District Captain for Palm Beach County Fire Rescue. You also work as an independent contractor for Schaeffer's Specialized Lubricants, an automotive lubrication company, and your compensation is commission-based. You have no control over pricing because Schaeffer's utilizes a set price. The work would occur on your own time and would not interfere or otherwise impair your job functions. When you handle sales, no monies or products are exchanged through you. All of the products are shipped directly from the Schaeffer's factory and Schaeffer's submits the bills to the customer.

In January 2017, NAPA Auto Parts will begin handling all of Palm Beach County Fire Rescue's shop-related needs. Therefore, all of the part, lubricants, and any other necessary products for PBCFR's vehicles will be purchased and stocked by NAPA.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442, §2-443(d), and §2-443(e)(5) of the Code:


Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
- (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.

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

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

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal

⁶ Id.