



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

May 4, 2017 – 1:30 p.m.

Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Minutes from April 2, 2017
- V. Proposed Advisory Opinion RQO 17-004
- 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.

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

APRIL 6, 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 – Absent

STAFF:

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

ADMINISTRATIVE STAFF:

Cristina Lizarraga, Minutes Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Michael Kridel said that this would be a quick meeting. He said that there was a quorum and an abbreviated agenda.

IV. APPROVAL OF MINUTES FROM MARCH 2, 2017

MOTION to approve the March 2, 2017, minutes. Motion by Judy Pierman, seconded by Michael Loffredo, and carried 3-0. Clevis Headley and Sarah Shullman absent.

V. APPROVAL OF MINUTES FROM MARCH 6, 2017

Commissioner Judy Pierman said that on page 22 of 36, she was recorded saying that “requesting a government discount was not unethical” as a statement, but she recalled that she was actually inquiring whether or not a government discount was not unethical.

COE Intake and Compliance Manager Gina Levesque said that the clerk would review the meeting to verify whether the minutes were correct as written.

Commissioner Pierman said that with the clerk’s verification, she would approve the minutes.

MOTION to approve the March 6, 2017, minutes as to be amended following clerk’s verification. Motion by Judy Pierman, seconded by Michael Loffredo, and carried 3-0. Clevis Headley and Sarah Shullman absent.

(CLERK’S NOTE: The clerk verified that the March 6, 2017, minutes were correct as written. Ms. Levesque confirmed that the minutes would be published as initially submitted.)

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. RQO 17-005

VI.b. RQO 17-006

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

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. EXECUTIVE DIRECTOR COMMENTS

VIII.a.

DISCUSSED: Palm Beach County Day.

COE Executive Director Mark Bannon said that he visited the City of Tallahassee on March 7th and 8th for Palm Beach County Day. He added that he met with legislators and it was an interesting experience.

EXECUTIVE DIRECTOR COMMENTS – CONTINUED

VIII.b.

DISCUSSED: Trainings.

Mr. Bannon said that he and COE General Counsel Christie Kelley were conducting live trainings in the City of Riviera Beach.

VIII.c.

DISCUSSED: Commendation.

Mr. Bannon commended Ms. Levesque's son, who reached all of the qualifications for Eagle Scout, the highest rank attainable in the Boy Scouting program of the Boy Scouts of America. He added that it was an achievement that only 4-5% of scouts ever reached.

VIII.d.

DISCUSSED: Anniversary.

Mr. Bannon acknowledged that April 5th was the 1-year anniversary of COE Investigator Abigail Irizarry's employment with the COE.

IX. COMMISSION COMMENTS

IX.a.

DISCUSSED: Congratulations.

Commissioner Pierman congratulated Ms. Levesque's son for his achievement in reaching the rank of Eagle Scout.

X. PUBLIC COMMENTS - None

(This space left blank intentionally.)

XI. ADJOURNMENT

At 1:38 p.m., the chair declared the meeting adjourned.

APPROVED

Chair/Vice Chair

April 13, 2017

Paulette Burdick, Mayor
Palm Beach County Commissioner – District 2
301 North Olive Avenue
West Palm Beach, FL 33401

Re: RQO 17-004
Conflict of Interest

Dear Mayor Burdick,

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:

QUESTIONS:

Under the Palm Beach County Code of Ethics (Code), what prohibitions would exist for you if you serve as an Executive Champion of Achieve Palm Beach County (Achieve PBC) in your private capacity? What prohibitions does the Code place on fundraising on behalf of Achieve PBC?

ANSWER:

As an elected official, you are prohibited from using your official position as a County Commissioner in any manner to give a special financial benefit to a civic group, a social, charitable, or religious organization, or other non-profit organization of which you are an officer or a director.¹ Here, the issue turns on whether the “Executive Champions” are in fact a “de facto” board of directors. In general, the functions of a non-profit organization’s board of directors are strategic planning, oversight of the organization’s operations, and fundraising. To accomplish these functions, the most common duties that a board member is tasked with include:

- selecting the executive;
- supporting the executive and review his or her performance;
- ensuring effective organizational planning;
- ensuring adequate resources through fundraising;
- manage resources effectively;
- monitor the organization’s programs and services;
- enhance the organization’s public image.²

The Executive Champions are responsible for:

- providing oversight and guidance to the strategic direction of Achieve Palm Beach County

¹ 2-443(a)(7)

² Richard T. Ingram, Ten Basic Responsibilities of Nonprofit Boards (BoardSource).

- participating in selecting the Achieve PBC Executive Director
- providing strategic guidance to the Achieve PBC Executive Director
- participating in major fundraising efforts on behalf of Achieve PBC
- monitoring initiative progress and results
- managing organization resources to support the initiative
- serving to enhance Achieve PBC's image among community leaders

Based on the information provided to the COE, the duties of the Achieve PBC Executive Champion include the same duties as a typical board of directors. Therefore, although Achieve PBC does not have a formalized board of directors, because they are fulfilling the same function, the Executive Champions are serving as a "de facto" board of directors.

Because the Executive Champions are serving as a de facto board of directors, as an elected official, you are prohibited from using your official position as the mayor of the BCC in any manner to give a special financial benefit to Achieve PBC.³ As a member of the board of directors of Achieve PBC, lending your name and official title to a fundraising effort would per se constitute using your elected office to give a special financial benefit to Achieve PBC, to the exclusion of all other charitable organizations that are similarly situated.⁴ Therefore, if you wish to use your official title to solicit donations on behalf of Achieve PBC, you may not serve as an Executive Champion. Alternatively, should you choose to remain as an Executive Champion of Achieve PBC, any solicitation would need to be in your personal name without any reference to your public title or connection to your official position. This would apply directly to you or indirectly to anyone soliciting on your behalf.

Furthermore, should you choose to accept a position as an Executive Champion, and decide to only use your name without your official title to solicit on behalf of Achieve PBC, any solicitation in excess of \$100 from a vendor, lobbyist, principal or employer of a lobbyist of Palm Beach County must still be transparent. Thus, you or Achieve PBC must maintain a record of the solicitations from county vendors, lobbyists, or principals or employers of lobbyist and submit a log to the COE within 30 days of the event, or if no event, within 30 days of the solicitation.⁵ Additionally, you may not solicit any person or entity with a pending application before the Palm Beach County Board of County Commissioners (BCC).⁶ You must also take great care that solicitations accepted on behalf of Achieve PBC do not result in any special consideration or quid pro quo in your official capacity as a county commissioner.

In addition, while serving as an Executive Champion of Achieve PBC, if any matter comes before the BCC which would result in a special financial benefit to Achieve PBC, you may not participate in the discussion surrounding the issue and you must abstain for voting on the matter.⁷ If you have such a conflict, you must (1) publicly disclose the nature of the conflict before the BCC discusses the matter; (2) refrain from voting on and participating in the matter; and (3) file a state voting conflict form (Form 8b).⁸

FACTS:

According to the facts you submitted to the COE, you serve as the mayor of the BCC. You have been asked to serve as an Executive Champion for Achieve PBC, an organization currently hosted as a start up by the

³ 2-443(a)(7)

⁴ RQO 11-112; RQO 11-115

⁵ 2-444(h)

⁶ Id.

⁷ 2-443(c)

⁸ Id.

Community Foundation for Palm Beach and Martin Counties, a 501(c)(3) non-profit organization. Achieve PBC is currently not an independent non-profit corporation and does not have a formal board of directors but will have Executive Champions who provide guidance and oversight. The Executive Champions serve as the public champions for Achieve PBC. The mission of Achieve PBC is to collectively ensure an integrated and effective system of support from middle school through post-secondary that empowers students for career success. The Executive Champion promotes the mission, vision, and progress of the partnership among community leaders in order to sustain public will and financial support.

If you serve as an Executive Champion, you stated that you would not be identified as the mayor or as a county commissioner in any fundraising materials. In addition, you stated that you would not use county staff or resources to solicit or accept donations.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-443(c), and §2-444(h) 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:
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

Sec. 2-444. Gift law.

- (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 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