



Honesty - Integrity - Character

Palm Beach County
Commission on Ethics
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West Palm Beach, FL 33401
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E-mail: ethics@pbcgov.org

Commissioners
Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Bryan Kummerlen
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 11, 2018 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session will begin at 1:40pm
Regular Agenda will resume at 3:00pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from December 14, 2017
- V. Executive Sessions
 - a. C17-030
 - b. C17-031
 - c. C17-027
 - d. C17-002
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 17-024
 - b. RQO 17-026
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- 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**

DECEMBER 14, 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
Bryan Kummerlen
Judy M. Pierman – Absent
Sarah L. Shullman

STAFF:

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

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

III. INTRODUCTORY REMARKS – None

IV. APPROVAL OF MINUTES FROM NOVEMBER 2, 2017

MOTION to approve the November 2, 2017 minutes. Motion by Clevis Headley, seconded by Bryan Kummerlen, and carried 4-0. Judy Pierman absent.

RECESS

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

V. EXECUTIVE SESSION: C17-040

RECONVENE

At 2:16 p.m., the meeting reconvened, and at Chair Kridel's request for a roll call, Vice Chair Headley, and Commissioners Kummerlen, and Sarah Shullman were present.

Vice Chair Headley read the following Public Report and Final Order of Dismissal:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on November 8, 2017, alleging that Respondent, Geeta Loach Jacobson, a Palm Beach County employee, violated §2-444(a)(1) of the Palm Beach County Code of Ethics by knowingly accepting a gift from a person that she knew, or should have known, was an employer of a lobbyist who lobbied Palm Beach County.

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 December 14, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and Respondent, the Commission concluded no probable cause exists to believe a violation occurred because the gift met the public purpose exception.

V. – CONTINUED

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Geeta Loach-Jackson, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on December 14, 2017.

By: Michael S. Kridel, Chair.

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

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. RQO 17-023

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

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 17-025

Christie Kelley, COE General Counsel, said that:

- A member of the Village of Wellington Construction Board of Adjustments and Appeals (board) asked whether his outside employment at an engineering consulting firm would create a conflict while serving on the board.
- Staff submitted that his employment with the engineering consulting firm would not create a conflict as long as he did not use his board position to give a special financial benefit to his outside employer or any customer/client of his outside employer.

VIII.a. – CONTINUED

- If his outside employer or the customer/client of his outside employer appeared before the board, he would have to publicly disclose the nature of the conflict, abstain from participating in, or voting on the matter, and he would have to file a State voting conflict form.

Commissioner Shullman said that:

- The advisory opinion letter was unclear on whether a special financial benefit could still occur if his outside employer or customer/client did not appear before the board.
- The language “or would receive a special financial benefit from your vote on the matter” could be added after the word “matter” in the second sentence, page 2, of the advisory opinion letter.
- The outside employer provided forensic engineering to the property insurance industry so any dollar savings to the outside employer’s client would also be considered a type of financial benefit.
- The words “or any savings to that customer or client of the employer” could be added in parentheses after the words “special financial benefit.”

Ms. Kelley said that the fourth line of the advisory opinion letter’s answer should state “which gives” rather than “which your give.”

MOTION to approve advisory opinion letter RQO 17-025 as amended to include the changes as discussed. Motion by Sarah Shullman, seconded by Clevis Headley, and carried 4-0. Judy Pierman absent.

IX. EXECUTIVE DIRECTOR COMMENTS

IX.a.

DISCUSSED: Council on Governmental Ethics Laws (COGEL), All Hazard Incident Management Team, City of Boca Raton (Boca Raton) Council meeting, and the Palm Beach Flagler Rotary Club.

IX. - CONTINUED

Mark Bannon, COE Executive Director, said that:

- He and Ms. Kelley attended the annual COGEL conference where information was gleaned from previous conferences when drafting the COE's handbooks and Top Ten List.
- Gina Levesque, COE Intake and Compliance Manager, completed a training session at the County's All Hazard Incident Management Team conference.
- He was invited to speak at a Boca Raton Council meeting about voting conflict issues, advisory opinions, and best practices and suggestions.
- Peter Cruz, with the Public Ethics Academy at Florida Atlantic University, requested that he present a COE overview to the Palm Beach Flagler Rotary Club.

X. COMMISSION COMMENTS – None

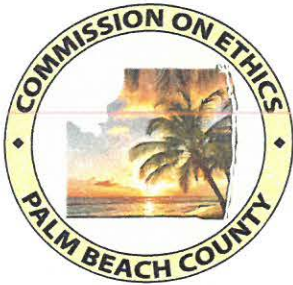
XI. PUBLIC COMMENTS – None

XII. ADJOURNMENT

At 2:28 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*
Bryan Kummerlen
Judy M. Pierman
Sarah L. Shullman

Executive Director

Mark E. Bannon

December 21, 2017

Ms. Susan Thaler, President
Town of Briny Breezes
4802 North Ocean Blvd.
Briny Breezes, FL 33435

Re: RQO 17-024
Conflict of Interest

Dear President Thaler,

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

QUESTION:

Would a prohibited conflict of interest exist for James Arena, a local licensed realtor, to serve on the Town of Briny Breezes Planning and Zoning Board (PBZ) and to also act as an unpaid broker for the town on the sale of its cooperative property?

ANSWER:

In general, you cannot ask for an advisory opinion that does not involve you. COE Rule of Procedure 2.2 states, in relevant part, that only persons who are under the jurisdiction of the Code of Ethics may request an advisory opinion regarding the interpretation or application of the Code of Ethics to himself or herself.¹ However, since the Town Council appoints the PBZ members, and you are seeking an opinion proactively to avoid any potential issues for this prospective appointee, the COE will make an exception and provide an opinion.

Under the Code, members of any advisory, quasi-judicial, or any other local board who are appointed by members of local municipal governing bodies are considered "officials."² As an official, Mr. Arena cannot use his position on the PBZ in any way to give specified persons or entities a special financial benefit.³ In addition, he is also prohibited from participating in or voting on a matter, which would give a special financial benefit to those same specified persons or entities.⁴ Among the specified persons or entities are himself, his outside business, and a customer or client of his outside business.⁵

Here, Mr. Arena has stated that he would not take a commission for the sale to the town's cooperative property. Therefore, Mr. Arena would not receive a financial benefit that differs from any other resident as any potential financial benefit from the sale of the property would be shared the same among the town's residents. However, Mr. Arena must also ensure that his actions would not result in a special financial benefit being given to his outside business or a customer or client of his outside business. The Code defines an outside

¹ COE Rule of Procedure 2.2

² §2-442

³ §2-443(a)1-7

⁴ §2-443(c)

⁵ Id.

business as any entity in which the official has an ownership interest of at least five percent. As the owner of his real estate firm, that firm is considered Mr. Arena's outside business.⁶ Thus, he will be prohibited from using his official position as a PZB member in any manner, including participating in or voting on a matter, to give a special financial benefit to himself, his outside business, or any customer or client of his outside business. Further, the Code defines a customer or client as any person or entity to which the official's outside business has provided at least \$10,000 in good or services during the previous twenty-four months.⁷ Therefore, any person or entity who has paid over \$10,000 to his real estate firm for services during a 24-month period is considered his customer or client.

In addition, the Code prohibits an official from using his official position to corruptly secure any special exemption or benefit for any person or entity.⁸ The Code defines corruptly as acting with a wrongful intent that is inconsistent with the proper performance of the official's public duties.

The Code also prohibits an official or his outside business from entering into any contract for goods or services with the municipality he represents, unless an exception applies.⁹ One of the exceptions is where the total amount of the contract between the official or his outside business and the municipality does not exceed \$500 per calendar year.¹⁰ Here, the contractual relationships prohibition does not apply to a contract between the Town of Briny Breezes and Mr. Arena for him to serve as the broker on the sale of the town's cooperative property because he would not receive a commission from the sale and thus the contract would not exceed \$500.

Therefore, under the Code, Mr. Arena would not be prohibited from serving on the PBZ while also acting as the realtor for the sale of the Town's cooperative property as long as he does not use his position as a PBZ member in any way to give a special financial benefit to any of the persons or entities specified in §2-443(a)1-7 of the Code. Although Mr. Arena stated that he would not take a commission from the sale of the Town cooperative property, he also must ensure that he does not act in a manner that will give a special financial benefit to his outside business or a customer or client of his outside business. He is also prohibited from using his position on the PZB to corruptly secure a special benefit for anyone.

Using the facts provided, if a matter before the PBZ would give a special financial benefit to himself, his outside business, or a customer or client of his outside business, Mr. Arena would be prohibited from participating in or voting on that matter. In such an instance, the Code requires him to publicly disclose the nature of the conflict, abstain from participating in or voting on the matter, and file a state voting conflict form (Form 8B).

FACTS:

You are an elected official, serving as the President of the Town of Briny Breeze Town Council. The Town of Briny Breezes is 0.11 square miles in size, consists of approximately 400 residences, and has a population of approximately 600 residents. One of the residents, James Arena, is interested in serving on the Planning and Zoning Board. Mr. Arena is a licensed realtor and the owner and broker of Arena & Company Real Estate. Mr. Arena is currently surveying town residents as to their level of interest in selling the town's cooperative property. He has stated that if the town residents decide to sell the property, he is willing to act as the broker and would not take a commission from the sale.

⁶ §2-442

⁷ Id.

⁸ §2-443(b)

⁹ §2-443(d)

¹⁰ §2-443(e)(4)

LEGAL BASIS:

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

Sec. 2-442. Definitions.

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

Outside employer or business includes:

(2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

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:

(4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;

(5) A customer or client of the official or employee's outside employer or business;

(b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource, which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

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

(d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business.

- (e) **Exceptions and waiver.** In addition, no official or employee shall be held in violation of subsection (d) if:
- (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based on 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

Commissioners

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

Executive Director

Mark E. Bannon

December 22, 2017

Mr. Steven Grant, Mayor
City of Boynton Beach
100 E. Boynton Beach Blvd.
Boynton Beach, FL 33435

Re: RQO 17-026
Conflict of Interest

Dear Mayor Grant,

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 the Palm Beach County Code of Ethics (Code) prohibit you from having outside employment with the Greater Boynton Beach Chamber of Commerce (the Chamber) while you serve as the Mayor of the Boynton Beach City Commission?

ANSWER:

The Code prohibits an official from using his official position or office, or taking or failing to take any action, or influencing others to take or fail to any action, in a manner which he knows would give a special financial benefit to specified persons or entities.¹ The official is also prohibited from participating in or voting on a matter which your give a special financial benefit to any of the persons or entities specified in Sec. 2-443(a)(1-7).² Your outside employer and customers or clients of your outside employer are among those specified persons or entities.³

The Code defines an outside employer as an entity of which the official is an employee and from which he receives compensation for services rendered. Thus, you are prohibited from using your official position in any manner, including participating in or voting on a matter, to give a special financial benefit to the Chamber, which will be your outside employer. The Code defines a customer or client as any person or entity to which the official's outside employer or business has provided at least \$10,000 in good or services during the previous twenty-four months. In the case of the Chamber, this might include either members or non-members of the Chamber if they meet the criteria as customers or clients.

Therefore, any person or entity who pays over \$10,000 to the Chamber for goods or services during a 24-month period is considered a customer or client of the Chamber. Here, any person or entity who pays for a Chamber "investment level" or other services, such as advertisements on the Chamber's website or in its annual magazine, which exceeds \$10,000 during the previous 24 months would be considered a customer or client of the Chamber, and you would be prohibited from participating in or voting on any matter that would give that customer or client a special financial benefit.

¹ §2-443(a)1-7

² §2-443(c)

³ §2-443(a)1-7

In addition, the Code prohibits a public employee from using his official position to corruptly secure any special exemption or benefit for any person or entity.⁴ The Code defines corruptly as acting with a wrongful intent that is inconsistent with the proper performance of the employee's official duties.

Based on the facts submitted, under the Code, your employment with the Greater Boynton Beach Chamber of Commerce would not create a conflict as long as you do not use your position as the Mayor of the Boynton Beach City Commission in any way to give a special financial benefit to the Chamber or any customer or client of the Chamber. You are also prohibited from using your position on the City Commission to corruptly secure a special benefit for anyone. If a matter before the City Commission would give a special financial benefit to the Chamber or a customer or client of the Chamber, you would be prohibited from participating in or voting on that matter. In such an instance, the Code requires you to publicly disclose the nature of the conflict, abstain from participating in or voting on the matter, and file a state voting conflict form (Form 8B).

FACTS:

You are an elected official, serving as the Mayor of the City of Boynton Beach. You are interested in working for the Greater Boynton Beach Chamber of Commerce; you would be a paid employee of the organization. According to its website (www.boyntonbeach.org), the Greater Boynton Beach Chamber of Commerce is a private not-for-profit membership organization. The organization has professional staff who work with businesses who are members of the organization to improve their business and build a stronger business community. The basic membership rates for businesses range from \$250 to \$370 annually. The Chamber also has additional "investment levels" which range from \$670 to \$7,500 per year. The investment levels provide additional marketing opportunities for members. Some of these opportunities include company name listed on the Chamber letterhead, verbal recognition of the company or signage at all Chamber events, and the company logo and a clickable link listed on the Chamber's website.

The Chamber produces an annual magazine and maintains a website where they promote local businesses. Members can also pay to advertise on the Chamber's website. The Chamber also meets regularly with Palm Beach County and city officials to maintain open communications in an effort to be proactive on issues at the local level.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-443(b), and §2-443(c) 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:
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;
- (b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource, which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through

⁴ §2-443(b)

(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/gai