

*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](mailto:ethics@pbcgov.org)**

**Commissioners**

Michael S. Kridel, Chair

Sarah L. Shullman

Bryan Kummerlen

Rodney G. Romano

Peter L. Cruise

**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 1, 2018 – 1:30 p.m.  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

**Meeting will begin at 1:30pm**  
**Executive Session will begin at 1:45pm**  
**Regular Agenda will resume at 2:30pm**

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- I. Swearing-in ceremony by Judge Krista Marx
  - a. Michael S. Kridel
  - b. Rodney G. Romano
  - c. Peter L. Cruise
- II. Call to Order
- III. Roll Call
- IV. Introductory Remarks
- V. Approval of Minutes from February 1, 2018
- VI. Executive Sessions
  - a. C17-009
  - b. C17-020
- VII. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 18-001
  - b. RQO 18-002
  - c. RQO 18-003
  - d. RQO 18-006
- VIII. Items Pulled from Consent Agenda
  - a.
- IX. Proposed Advisory Opinions
  - a. RQO 17-021
- 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**

**FEBRUARY 1, 2018**

**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  
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 JANUARY 11, 2018**

**MOTION to approve the January 11, 2018 minutes. Motion by Clevis Headley, seconded by Judy Pierman, and carried 5-0.**

**RECESS**

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

**V. EXECUTIVE SESSIONS**

**RECONVENE**

**At 2:15 p.m., the meeting reconvened, and at Chair Michael Kridel's request for a roll call, Vice Chair Headley, and Commissioners Bryan Kummerlen, Pierman, and Sara Shullman were present.**

**V.a. C17-045**

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 30, 2017, alleging that Respondent, John McGovern, a Village of Wellington elected official, violated §2-444(a)(l) of the Palm Beach County Code of Ethics by knowingly accepting a gift from a person that he knew, or should have known with the exercise of reasonable care, was a principal of lobbyists who lobbied the Village of Wellington.

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 February 1, 2018, 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's attorney, the Commission concluded no probable cause exists to believe a violation occurred because Respondent exercised reasonable care prior to accepting the gift by asking the gift giver directly whether he employed lobbyists.

**V.a. – CONTINUED**

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, John McGovern, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on February 1, 2018.

By: Michael S. Kridel, Chair

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

**V.b. C17-046**

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 complaints on November 30, 2017, alleging that Respondent, Richard Schechter, a principal of lobbyists registered to lobby the Village of Wellington, violated §2-444(a)(2) of the Palm Beach County Code of Ethics by giving, directly or indirectly, a gift with a value greater than \$100 in the aggregate for the calendar year to persons who he knew was a Village of Wellington official.

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. Respondent and Advocate entered into a negotiated settlement wherein Respondent admitted to giving two tickets to the Palm Beach Masters - Deeridge Farm event, in February 2017, with a value of \$400 to a person who he knew was a Village of Wellington official. Respondent admitted that the conveyance of this gift could reasonably be perceived as a violation of §2-444(a)(2) of the Palm Beach County Code of Ethics, but maintained that any such violation was unintentional and inadvertent because he had terminated the employment of the lobbyists in September 2016, but the lobbyists failed to withdraw their lobbyist registration upon their termination.

## **V.b – CONTINUED**

On February 1, 2018, the negotiated settlement was presented to the COE for approval. After reviewing all relevant documents associated with the case and listening to the oral statements by the Advocate and the Respondent's attorney, the Commission approved the negotiated settlement, determined that the violation was unintentional or inadvertent, issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance, and dismissed the case.

Therefore it is:

**ORDERED AND ADJUDGED** that the complaint against Respondent, Richard Schechter, 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 February 1, 2018.

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 17-027**

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

## **VII. ITEMS PULLED FROM CONSENT AGENDA – None**

## **VIII. PRESENTATION OF ANNUAL REPORT**

Mark Bannon, COE Executive Director, said that:

- The COE's mission statement remained virtually the same since the COE's inception in 2010.

## VIII. – CONTINUED

- In 2017, he and COE General Counsel Christie Kelley conducted 52 on-site training sessions with various entities and municipalities.
  - Training was also available on DVD, YouTube, and through internet streaming of the COE's Web site.
  - The most-viewed page on the Web site involved required training.
- 27 advisory opinion letters were issued regarding voting conflicts, conflicts of interest, and misuse/corrupt misuse of office.
- 46 sworn complaints were filed in 2017.
  - 44 were self-initiated and 2 were from other individuals.
  - 34 were in various stages of investigation and/or procedure.
  - 8 resulted in findings of probable cause and issuances of letters of instruction.
  - 2 were administratively dismissed and were found not to be legally sufficient.
  - 2 were dismissed with a finding of no probable cause.
  - 2 probable cause complaints were dismissed with letters of instruction, and 1 was dismissed with a letter of reprimand.
  - 1 complaint reached final hearing, and a letter of reprimand was issued.
- 34 inquiries were opened in 2017.
  - 6 were found not to be legally sufficient.
  - 19 became self-initiated complaints, of which 1 was ongoing.
  - 8 involved the failure of lobbyists to file expenditure reports and resulted in suspension of their lobbying activities.

## VIII. – CONTINUED

- 11 from 2016 were disposed of, with 6 found not to be legally sufficient and 7 being filed as self-initiated complaints.
- Gift law violations encompassed the majority of the complaints or inquiries.
- 49% of complaints or inquiries came from municipalities, 30% came from lobbyists, and 21% came from the County.
- The COE's 2017 fiscal year budget was \$634,700, of which, \$634,609.34 was expended.
- 2018 projects included:
  - creating 5-minute video clips that answered questions about the COE and uploading them onto the Web site;
  - gathering and analyzing data from existing performance metrics; and
  - continuing to improve and update the Web site.
- Increased improvements in the economy probably accounted for rising gift law violations, but staff never found that a gift was specifically given to improperly influence someone.
- Sending e-mail blasts to registered principals, lobbyists, and employers about the registration process would be primarily administered by the County.

Gina A. Levesque, COE Intake and Compliance Manager, said that Mr. Bannon was working to make the lobbyist database easier to maneuver and to determine if someone was registered as a principal or a lobbyist.

(This space intentionally left blank.)



## **IX. EXECUTIVE DIRECTOR COMMENTS**

### **IX.a.**

**DISCUSSED:** COE Recognition.

Mr. Bannon said that Chair Kridel accepted his reappointment for a second term. He added that Vice Chair Headley and Commissioner Pierman's terms were ending, and he thanked them for their service.

(CLERK'S NOTE: See below for continuation of item IX.)

## **X. COMMISSION COMMENTS**

### **X.a.**

**DISCUSSED:** COE Recognition.

Chair Kridel recognized Vice Chair Headley and Commissioner Pierman for serving on the COE.

Mr. Bannon said that Richard Radcliffe, Executive Director of the Palm Beach County League of Cities (League), expressed his appreciation of Vice Chair Headley and Commissioner Pierman.

Commissioners Shullman and Kummerlen recognized Vice Chair Headley and Commissioner Pierman for their service.

(CLERK'S NOTE: Item IX. was continued at this time.)

### **IX.b.**

**DISCUSSED:** Open COE Seats.

Mr. Bannon said that Peter Cruz and Rodney Romano would fill the COE seats for Florida Atlantic University and the League and that they would be sworn in on March 1, 2018.

**IX. – CONTINUED**

**IX.c.**

**DISCUSSED:** High School Ethics Bowl.

Mr. Bannon said that he, Ms. Kelley, and Ms. Levesque volunteered as judges and monitors for the High School Ethics Bowl held on January 27, 2018.

**IX.d.**

**DISCUSSED:** Complaint C17-002.

Mr. Bannon said that the COE found probable cause in C17-002 and that Ron Jones opted for a final hearing in the matter.

**XI. PUBLIC COMMENTS – None**

**XII. ADJOURNMENT**

**At 2:50 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

Agenda-Attachments

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Commissioners  
Michael S. Kridel, *Chair*

Clevis Headley, *Vice Chair*

Bryan Kummerlen

Judy M. Pierman

Sarah L. Shullman

**Executive Director**

Mark E. Bannon

February 7, 2018

Mr. Eric Curkin, First Transit  
3800 S. Congress Ave.  
Boynton Beach, FL 33426

Re: RQO 18-001  
Conflict of Interest

Dear Mr. Curkin,

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 your outside employment as a para-transit driver for First Transit, Inc. create a conflict of interest for you if you were to serve as an advisory board member of the Palm Tran Service Board (PTSB)?

**ANSWER:**

The Palm Beach County Code of Ethics (Code) prohibits you from using your official position in any way to give a special financial benefit to you or your outside employer.<sup>1</sup> Here, you would be prohibited from using your official position as a member of the PTSB in any way to give a special financial benefit to yourself or to First Transit. The Code also prohibits you from participating in or voting on any matter that would give a special financial benefit to you or to First Transit.<sup>2</sup> Therefore, if a matter before the PTSB would result in a special financial benefit being given to you or First Transit, you must publicly disclose the nature of the conflict, abstain from discussing and voting in the matter, and complete and file a State of Florida Commission on Ethics Conflict Form (Form 8B).

In addition, Section 2-443(d), *Contractual relationships*, of the Code prohibits an advisory board member from entering into any contract or other transaction for goods or services with the County. This prohibition extends to all contracts or transactions between the County, and the official, directly or indirectly, or the official's outside employer or business. Thus, if you were serve as a member of the PTSB, the Code prohibits your outside employer, First Transit, from having any contracts with the County.

However, this prohibition may not apply to your advisory board memberships as long as the board does not have contract oversight.<sup>3</sup> The Code defines contract oversight as any oversight, regulation, management, or policy-setting recommendations regarding the subject contract. If the advisory board has no oversight of the contract between your outside employer and the County, then the Code requires a public disclosure of the existence of the contract by the advisory board member.<sup>4</sup> This disclosure should occur at the time of the appointment to the board. If the advisory board has contract oversight, then the appointment to the board must be declined.<sup>5</sup> Based on the facts provided, the PTSB does not have contract oversight. Therefore, you are not prohibited from serving on the board, but you must publicly disclose the existence of the contract at the time of your appointment to the PTSB.

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<sup>1</sup> §2-443(a)(4)

<sup>2</sup> §2-443(c)

<sup>3</sup> §2-443(e)

<sup>4</sup> Id.

<sup>5</sup> Id.

**FACTS:**

You are a para-transit driver for First Transit, which has a contract with the County. According to Charles Frazier, Palm Tran Assistant Director, the PTSB does not have oversight of the contract between County and First Transit. You are under consideration to become a member of the PTSB. The PTSB selection committee requires that you submit documentation stating whether your outside employment with First Transit would create a conflict of interest if you were selected to serve on the PTSB.

The PTSB serves in an advisory capacity regarding matters concerning or impacting public transportation and oversee the bus service for fixed route and paratransit for Palm Beach County. However, the PTSB is not purely advisory because the Palm Beach County Board of County Commissioners delegated its authority to approve Palm Tran fixed route transportation service adjustments to the PTSB. The PTSB consists of 13 members.

**LEGAL BASIS:**

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

**Sec. 2-443. Prohibited conduct.**

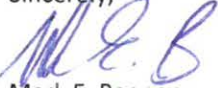
- (a) ***Misuse of public office or employment.*** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable 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;
  - (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;
- (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. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.
- (e) ***Exceptions and waiver.*** The requirements of subsection (d) above may be waived as it pertains to advisory board members where the advisory board member's board is purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. No waiver shall

be allowed where the advisory board member's board is not purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. Waiver may be effected by the board of county commissioners or by the local municipal governing body as applicable upon full disclosure of the contract or transaction prior to the waiver and an affirmative vote of a majority plus one (1) of the total membership of the board of county commissioners or the local municipal governing body as applicable. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after full disclosure of the contract or transaction at a public hearing, by the appointing person.

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,

A handwritten signature in blue ink, appearing to read "M.E.B.", enclosed within a blue oval.

Mark E. Bannon,  
Executive Director

CEK/gal



March 1, 2018

Mr. Eric Curkin, First Transit  
3800 S. Congress Ave.  
Boynton Beach, FL 33426

Re: RQO 18-001  
Conflict of Interest

Dear Mr. Curkin,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting on March 1, 2018.

**QUESTION:**

Does your outside employment as a para-transit driver for First Transit, Inc. create a conflict of interest for you if you were to serve as an advisory board member of the Palm Tran Service Board (PTSB)?

**ANSWER:**

The Palm Beach County Code of Ethics (Code) prohibits you from using your official position in any way to give a special financial benefit to you or your outside employer.<sup>1</sup> Here, you would be prohibited from using your official position as a member of the PTSB in any way to give a special financial benefit to yourself or to First Transit. The Code also prohibits you from participating in or voting on any matter that would give a special financial benefit to you or to First Transit.<sup>2</sup> Therefore, if a matter before the PTSB would result in a special financial benefit being given to you or First Transit, you must publicly disclose the nature of the conflict, abstain from discussing and voting in the matter, and complete and file a State of Florida Commission on Ethics Conflict Form (Form 8B).

In addition, Section 2-443(d), *Contractual relationships*, of the Code prohibits an advisory board member from entering into any contract or other transaction for goods or services with the County. This prohibition extends to all contracts or transactions between the County, and the official, directly or indirectly, or the official's outside employer or business. Thus, if you were to serve as a member of the PTSB, the Code prohibits your outside employer, First Transit, from having any contracts with the County.

However, this prohibition may not apply to your advisory board memberships as long as the board does not have contract oversight.<sup>3</sup> The Code defines contract oversight as any oversight, regulation, management, or policy-setting recommendations regarding the subject contract. If the advisory board has no oversight of the contract between your outside employer and the County, then the Code requires a public disclosure of the existence of the contract by the advisory board member.<sup>4</sup> This disclosure should occur at the time of the appointment to the board. If the advisory board has contract oversight, then the appointment to the board must be declined.<sup>5</sup> Based on the facts provided, the PTSB has ~~no~~ contract oversight because the board makes policy-setting recommendations regarding the contracts. Therefore, you are ~~not~~ prohibited from serving on the board, ~~but you must publicly disclose the existence of the contract at the time of your appointment to the PTSB~~ and must decline the appointment.

<sup>1</sup> §2-443(a)(4)

<sup>2</sup> §2-443(c)

<sup>3</sup> §2-443(e)

<sup>4</sup> Id.

<sup>5</sup> Id.

**FACTS:**

You are a para-transit driver for First Transit, which has a contract with the County. [According to Charles Frazier, Palm Tran Assistant Director, the PTSB does not have oversight, regulation, or management of the contract between the County and First Transit, but it does make policy-setting recommendation regarding the contract.](#) You are under consideration to become a member of the PTSB. –The PTSB selection committee requires that you submit documentation stating whether your outside employment with First Transit would create a conflict of interest if you were selected to serve on the PTSB.

The PTSB serves in an advisory capacity regarding matters concerning or impacting public transportation and oversee the bus service for fixed route and paratransit for Palm Beach County. However, the PTSB is not purely advisory because the Palm Beach County Board of County Commissioners delegated its authority to approve Palm Tran fixed route transportation service adjustments to the PTSB. The PTSB consists of 13 members.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a), §2-443(c), §2-443(d), and §2-443(e) 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;
  - (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;
- (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. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.
- (e) **Exceptions and waiver.** The requirements of subsection (d) above may be waived as it pertains to advisory board members where the advisory board member's board is purely advisory and provides regulation, oversight,

management, or policy-setting recommendations regarding the subject contract or transaction. No waiver shall be allowed where the advisory board member's board is not purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. Waiver may be effected by the board of county commissioners or by the local municipal governing body as applicable upon full disclosure of the contract or transaction prior to the waiver and an affirmative vote of a majority plus one (1) of the total membership of the board of county commissioners or the local municipal governing body as applicable. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after full disclosure of the contract or transaction at a public hearing, by the appointing person.

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*

February 7, 2018

Mr. Peter Kendall  
PBC Environmental Resources Management  
2300 N Jog Rd  
West Palm Beach, FL 33411

Re: RQO 18-002  
Conflict of Interest

Dear Mr. Kendall,

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 if you bid for and are awarded a contract to provide concessionaire services to Palm Beach County, your public employer?

**ANSWER:**

Based on the facts you have submitted, the Palm Beach County Code of Ethics (Code) prohibits you from being awarded this contract with Palm Beach County. However, the Code does not prohibit you from entering into a contract or transaction for goods and services with any of the municipalities within the County.

As a County employee, you may not use your official position to give or influence others to give you or your outside business a special financial benefit.<sup>1</sup> In addition, the Code prohibits you or your outside business from contracting with the County, unless one of several exceptions applies. Based upon the information you have provided, as an owner of the outside business entering into the contract with the County you are not eligible for a part-time employment waiver,<sup>2</sup> you and your business are not the sole source of concession services in the County,<sup>3</sup> the concession services would not constitute an emergency purchase,<sup>4</sup> and the contract between you or your business and the County would exceed \$500.<sup>5</sup> Therefore, those exceptions do not apply.

In addition, Sec. 2-443(e)(1) would also not apply. Section 2-4443(e)(1) provides an exception for contracts entered into under a process of sealed, competitive bidding, where your outside business is the lowest bidder, provided that you have not participated in the bid specifications or determination of the lowest bidder, have not used your position in any way to influence the award, and have filed a statement with the Supervisor of Elections and the COE disclosing the nature of your interest in the business prior to submitting the bid. If each bid submission fully complies with these requirements, the Code does not prohibit you or your outside business from contracting with the County.<sup>6</sup> Based on the facts presented, the "sealed bid/low bid" exception would not apply because the contract is not being awarded under a sealed, competitive bidding process. The selection committee will be reviewing and scoring the bids by awarding points for certain factors and criteria in each bid submitted before making its selection based on

<sup>1</sup> §2-443(a)

<sup>2</sup> RQO 12-076; RQO 13-008

<sup>3</sup> §2-443(e)(3)

<sup>4</sup> §2-443(e)(2)

<sup>5</sup> §2-443(e)(4)

<sup>6</sup> RQO 11-090

which bid has the highest points. Thus, because the bids are being analyzed and compared and points being awarded, it does not follow the sealed, competitive bidding process and that exception does not apply.

**FACTS:**

You are a Palm Beach County employee working in the Natural Resources Stewardship Division of the Environmental Resources Management Department. You are interested in submitting a bid for RFP # 2017-101-MJ (Request for Proposals to Provide Water Sports and Recreational Rental Equipment Concessionaire Services at Riverbend Park/Loxahatchee River Battlefield Park). The winning proposal will provide a temporary facility to operate the concession, supply all goods and recreational equipment, and obtain all necessary permits for the temporary facilities. Based on your conversations with Margaret Jackson, the contract analyst, the bids will not follow the sealed bid/low bid process. Instead, each contract will be reviewed and points will be awarded for certain factors and criteria in the proposals. The winning proposal will have the highest number of points.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a), §2-443(d), and §2-443(e) 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;
  - (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;
- (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:
- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
    - a. The official or employee or member of his or her household has in no way participated in the determination of the bid specifications or the determination of the lowest bidder;
    - b. The official or employee or member of his or her household has in no way used or attempted to use the official or employee's influence to persuade the agency, governmental entity or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
    - c. The official or employee, prior to or at the time of the submission of the bid, has filed a statement with the supervisor of elections and the commission on ethics, disclosing the nature of the interest in the outside employer or business submitting the bid.
  - (2) An emergency purchase or contract which would otherwise violate a provision of subsection (d) must be made in order to protect the health, safety, or welfare of the citizens of the county or municipality as applicable.
  - (3) The outside employer or business involved is the only source of supply within the county or municipality as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.
  - (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.



- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
- a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and
  - b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable; and
  - c. The employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
  - d. The employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
  - e. The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and
  - f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the commission on ethics. The document shall contain written acknowledgment of compliance with the provisions of subsection (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor and chief administrative officer of the county or municipality. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment.

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*

February 7, 2018

Ms. Melody Moore  
MooreCars, LLC.  
3800 S. Congress Avenue, Suite 8  
Boynton Beach, FL 33426

Re: RQO 18-003  
Conflict of Interest

Dear Ms. Moore,

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 you if you were to serve as a member of the Palm Tran Service Board (PTSB) when your outside business, MooreCars, LLC, is a vendor of First Transit, Inc., which is a vendor of Palm Beach County?

**ANSWER:**

In general, you would not be entitled to an advisory opinion because you are not currently under the jurisdiction of the Code of Ethics. 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.<sup>1</sup> However, since your appointment to the PTSB would bring you under the Code of Ethics, and you are seeking an opinion proactively to avoid any potential issues, the COE will make an exception and provide an opinion.

The Palm Beach County Code of Ethics (Code) prohibits you from using your official position, or taking any action, or influencing others to take any action, to give a special financial benefit to you, your outside business, or customers or clients of your outside business.<sup>2</sup> Here, you would be prohibited from using your official position as a member of the PTSB, or influencing others, in any way to give a special financial benefit to yourself, to MooreCars, LLC, or to any customer or client of MooreCars, LLC, including First Transit, Inc.

Similarly, the Code also prohibits you from participating in or voting on any matter that would give a special financial benefit to you, to MooreCars, LLC, or to any customer or client of MooreCars, LLC.<sup>3</sup> Therefore, if a matter before the PTSB would result in a special financial benefit being given to you, MooreCars, LLC, or any customer or client of MooreCars, LLC, you must publicly disclose the nature of the conflict, abstain from discussing and voting in the matter, complete and file a State of Florida Commission on Ethics Conflict Form (Form 8B).

In addition, Section 2-443(d), *Contractual relationships*, of the Code prohibits an advisory board member from entering into any contract or other transaction for goods or services with the County. This prohibition extends to all contracts or transactions between the County, and the official, directly or indirectly, or the official's outside business.

<sup>1</sup> COE Rule of Procedure 2.2

<sup>2</sup> §2-443(a)(4)

<sup>3</sup> §2-443(c)



Thus, if you were serve as a member of the PTSB, the Code prohibits your outside business, MooreCars, LLC, from having any contracts with the County. However, the contractual relationship prohibition may not apply to members of advisory boards as long as the board does not have oversight of the contract with the County.<sup>4</sup>

Based on the facts provided, MooreCars, LLC does not currently have any contracts or transactions for goods or services with the County. If the possibility of entering into a contract with the County occurs after you have been appointed, you must determine whether the PTSB will have any oversight of the contract between MooreCars, LLC and the County. If the PTSB will play any role in the oversight, regulation, management, or policy-setting recommendations regarding the contract, then the PTSB has contract oversight. If you determine that the PTSB does not have contract oversight, then you would have to publicly disclose the existence of the contract. This disclosure should occur when the contract between MooreCars, LLC and the County is approved. If the PTSB does have contract oversight, then you must either resign from the PTSB or withdraw the offer to contract with the County.

**FACTS:**

You are the owner of MooreCars, LLC which is a vendor of First Transit, Inc. MooreCars, LLC provides cleaning services to First Transit's business facility and to its vehicles. MooreCars, LLC is not a vendor of Palm Beach County.

You are under consideration to become a member of the PTSB. The PTSB selection committee requires that you submit documentation stating that whether your outside employment with First Transit would create a conflict of interest if you were selected to serve on the PTSB.

The PTSB serves in an advisory capacity regarding matters concerning or impacting public transportation and oversee the bus service for fixed route and paratransit for Palm Beach County. However, the PTSB is not purely advisory because the Palm Beach County Board of County Commissioners delegated its authority to approve Palm Tran fixed route transportation service adjustments to the PTSB. The PTSB consists of 13 members.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a), §2-443(c), §2-443(d), and §2-443(e) 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;
  - (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;
- (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).

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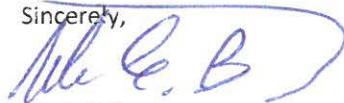
<sup>4</sup> §2-443(e)

- (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.** The requirements of subsection (d) above may be waived as it pertains to advisory board members where the advisory board member's board is purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. No waiver shall be allowed where the advisory board member's board is not purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. Waiver may be effected by the board of county commissioners or by the local municipal governing body as applicable upon full disclosure of the contract or transaction prior to the waiver and an affirmative vote of a majority plus one (1) of the total membership of the board of county commissioners or the local municipal governing body as applicable. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after full disclosure of the contract or transaction at a public hearing, by the appointing person.

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*

Agenda-Attachments

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**Commissioners**

Michael S. Kridel, *Chair*

Clevis Headley, *Vice Chair*

Bryan Kummerlen

Judy M. Pierman

Sarah L. Shullman

**Executive Director**

Mark E. Bannon

February 11, 2018

Mr. Rodney Romano  
1655 Palm Beach Lakes Blvd. Suite 700  
West Palm Beach, FL 33401

Re: RQO 18-006  
Conflict of Interest/Contractual Relationship

Dear Mr. Romano,

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 your outside business and employment as a mediator, which may include providing mediation services involving cases in which the County is a party, create a conflict of interest for you if you were to serve as a COE Commissioner?

**ANSWER:**

In general, Section 2-443(d), Contractual relationships, of the Palm Beach County Code of Ethics (Code) prohibits an official from entering into any contract or other transaction for goods or services with the County. This prohibition extends to all contracts or transactions between the County, and the official, directly or indirectly, or the official's outside employer or business. Thus, if you were to serve as a COE Commissioner, the Code prohibits your outside employer, Matrix Mediation, from having any contracts or transactions for services with the County.

However, this contractual relationship prohibition does not apply to a member of an advisory board as long as the board does not provide any regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. If the board will not provide any regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction, then the Code requires a public disclosure of the existence of the contract or transaction by the advisory board member. This disclosure should occur at the time of the appointment to the board or when the transactions or contracts are approved. Based on the facts provided, the COE does not provide any regulation, oversight, management, or policy-setting recommendations regarding any contracts or transactions between Matrix Mediation and the County. Therefore, you are not prohibited from serving on the COE, but you must publicly disclose the existence of the contract or transactions at the time of your appointment or when any subject contracts or transactions are approved.

**FACTS:**

You were selected by the Palm Beach County League of Cities to serve as its representative on the COE and will be sworn-in on March 1, 2018. The COE is a quasi-judicial board with jurisdiction extending to any person required to comply with the Palm Beach County Code of Ethics, Palm Beach County Lobbyist Registration

Ordinance, and the Palm Beach County Post-Employment Ordinance. The COE has the power to enforce these ordinances and to render advisory opinions regarding these ordinances.

You are the co-owner of Matrix Mediation, LLC, a dispute resolution firm. Matrix Mediation periodically mediates cases in which Palm Beach County, or a County agency, is a party. Matrix Mediation provides mediation service when scheduled by the lawyers involved in the litigation. All of the Matrix Mediation mediators, except you, are independent contractors. You stated that mediators do not have any power to resolve or render a ruling in a given legal matter but help facilitate settlement agreements.

**LEGAL BASIS:**

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

**Sec. 2-442. Definitions.**

Advisory board shall mean any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.

**Sec. 2-443. Prohibited conduct.**

(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. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.

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



March 1, 2018

Richard Ellis, Division Chief-Medical Services  
Palm Beach County Fire Rescue  
405 Pike Road  
West Palm Beach, FL 33411

Re: RQO 17-021  
Contractual Relationship/Conflict of Interest

Dear Chief Ellis,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting on March 1, 2018.

**QUESTION:**

Would a conflict of interest exist if Palm Beach County Fire Rescue (PBCFR) enters into a contract with First Response Medical Consultants, LLC (FRMC), which is owned by PBCFR Medical Director Dr. Kenneth Schepcke and Associate Medical Director Dr. Peter Antevy, where the contract would allow PBCFR to be reimbursed by FRMC for providing mobile-integrated health (MIH) or community paramedicine (CP) services to FRMC subscribers?

**ANSWER:**

The Palm Beach County Code of Ethics (Code of Ethics) prohibits public employees from entering into any contract or other transaction to provide goods and services to their public employer.<sup>1</sup> Based on the facts provided, the proposed contract between the PBCFR and FRMC would not be prohibited. Under the Code, Dr. Schepcke and Dr. Antevy, or their outside business, would be prohibited from entering into a contract with PBCFR where PBCFR would pay them or their outside business for services rendered. Here, the opposite would occur; PBCFR would enter into a contract where their outside business, FRMC, would pay PBCFR for providing the services. PBCFR would be the provider of MIH or CP services to patients, and FRMC would pay PBCFR for providing those services. Thus, a violation of the contractual relationship section would not occur.

The Code of Ethics also prohibits public employees from using their official positions to give themselves, their outside business, or customers or clients of their outside business a special financial benefit not shared with similarly situated members of the general public.<sup>2</sup> Therefore, Dr. Schepcke and Dr. Antevy are prohibited from using their positions as the Medical Director and Associate Medical Director, respectively, to give themselves, FRMC, or any customers or clients of FRMC a special financial benefit. Moreover, although the Code does not prohibit Dr. Schepcke and Dr. Antevy from trying to sell the services of FRMC to citizens of Palm Beach County in their personal capacity and on their own time, they may not use their official positions as the medical directors of PBCFR to promote their company. To avoid violating the Code, best practices include: refraining from using or referring to their official position, title, county email, or wearing their county uniform while advertising or marketing their services to the general public.

Further, the Code of Ethics prohibits public employees from using their official positions to corruptly secure a special privilege, benefit, or exemption for themselves or anyone else.<sup>3</sup> Corruptly is defined as "done with a wrongful intent and for the purpose of obtaining...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."<sup>4</sup> This means that Dr. Schepcke and Dr. Antevy are prohibited from using their official positions in any way that is inconsistent with the proper performance of their duties as the PBCFR medicals directors to corruptly secure a special privilege or benefit for any of their clients. Thus,

<sup>1</sup> §2-443(d)

<sup>2</sup> §2-443(a)

<sup>3</sup> §2-443(b)

<sup>4</sup> Id.

clients of FRMC cannot be given preference over other calls. For example, FRMC clients cannot receive priority response over other 911 calls due solely to their enrollment in the FRMC program.

Even given these guidelines for you to follow to avoid a potential violation of the Code of Ethics, the COE feels that in this case they have an obligation to inform you that a strong appearance of impropriety may exist in this contractual relationship based on your positions as PBCFR Medical Director and Associate Medical Director. Should you choose to form this relationship between your outside business and PBCFR, you must be extremely careful to take no actions that can be construed as a use of your official positions to give yourselves, your outside business, or any customer or client of your outside business a special financial benefit not available to the general public. You must also ensure that you take no actions that would be considered to be corrupt as defined in the Code of Ethics.

**FACTS:**

You are the Division Chief of Medical Services for Palm Beach County Fire Rescue. PBCFR is exploring the possibility of entering into a contractual agreement with FRMC to provide MIH and CP services to residents in Palm Beach County who are enrolled with FRMC. The owners of FRMC are Dr. Kenneth Scheppke and Dr. Peter Antevy, who have current contractual arrangements to serve as the Medical Director and the Associate Medical Director, respectively, for PBCFR. Contract personnel performing a government function are included in the Code's definition of employees. Serving as the Medical Director and Associate Medical Director for PBCFR constitutes a government function, and thus, both Dr. Scheppke and Dr. Antevy are County employees and are under the jurisdiction of the Code of Ethics.

Their business, FRMC, works with accountable care organizations (ACOs) and other physician groups and develops and implements care models designed to improve high-quality care delivery, timely physical and laboratory medical evaluations and medical treatment, and Wi-Fi enabled remote patient health care monitoring with early warning and intervention for patients with signs of deterioration of their chronic illness. FRMC states that their sole function is to improve patient access to quality healthcare and reduce unnecessary emergency department and hospital visits for the patients treated by ACOs.

As a part of its work with the ACOs, FRMC will contract with local emergency medical service (EMS) agencies to pay those EMS agencies to provide MIH or CP services to patients who enroll in FRMC's services. The goal of most MIH or CP programs is to avoid transporting patients but instead treat them in place and avoid unnecessary hospital utilization. Currently, a mainstream EMS reimbursement model for MIH or CP services does not exist, making those valuable MIH or CP services a cost drain on available resources for fire rescue agencies engaged in those programs. In exchange for providing MIH or CP services for the patients enrolled in FRMC's services, FRMC reimburses contracted EMS agencies.

PBCFR is interested in becoming one of these EMS agencies. If PBCFR is able to contract with FRMC, PBCFR will initially train its currently employed paramedics to work on MIH or CP program. It will then hire paramedics specifically for the community paramedics positions to respond and provide these services.

The patients enrolled in the FRMC program will have three ways to have the PBCFR community paramedics respond.

- (1) When the patient calls 911, dispatch handles the call as usual but if the address given shows that the patient is enrolled in the FRMC program, then the community paramedics are called to respond.
- (2) If the address does not trigger the community paramedics, then a normal response will be triggered and dispatched. While the responding unit is in-route, if the secondary more in depth triage indicates the patient is a candidate for MIH or CP response, or if the arriving unit indicates such a need, then the patient will have community paramedics respond to his or her address.
- (3) If the patient or the patient's physician feels the patient needs a MIH or CP response but not a 911 emergency response, then he or she can dial a non-emergency phone number that will call the CP triage officer in dispatch to arrange the follow up care by a CP team. This can always be upgraded to a 911 response by the CP triage officer or the responding CP team.

Neither Dr. Scheppke nor Dr. Antevy have any control or oversee the dispatch of EMS to calls for service. Dispatch is performed via standard protocols. They oversee the medical correctness of the dispatcher life support program, i.e., the lifesaving advice given over the phone. They do not determine response levels. Response levels are approved by the Fire Chief or the Fire Chief's designee.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a), §2-443(b), and §2-443(d) 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;
  - (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.
- (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. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public..

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.

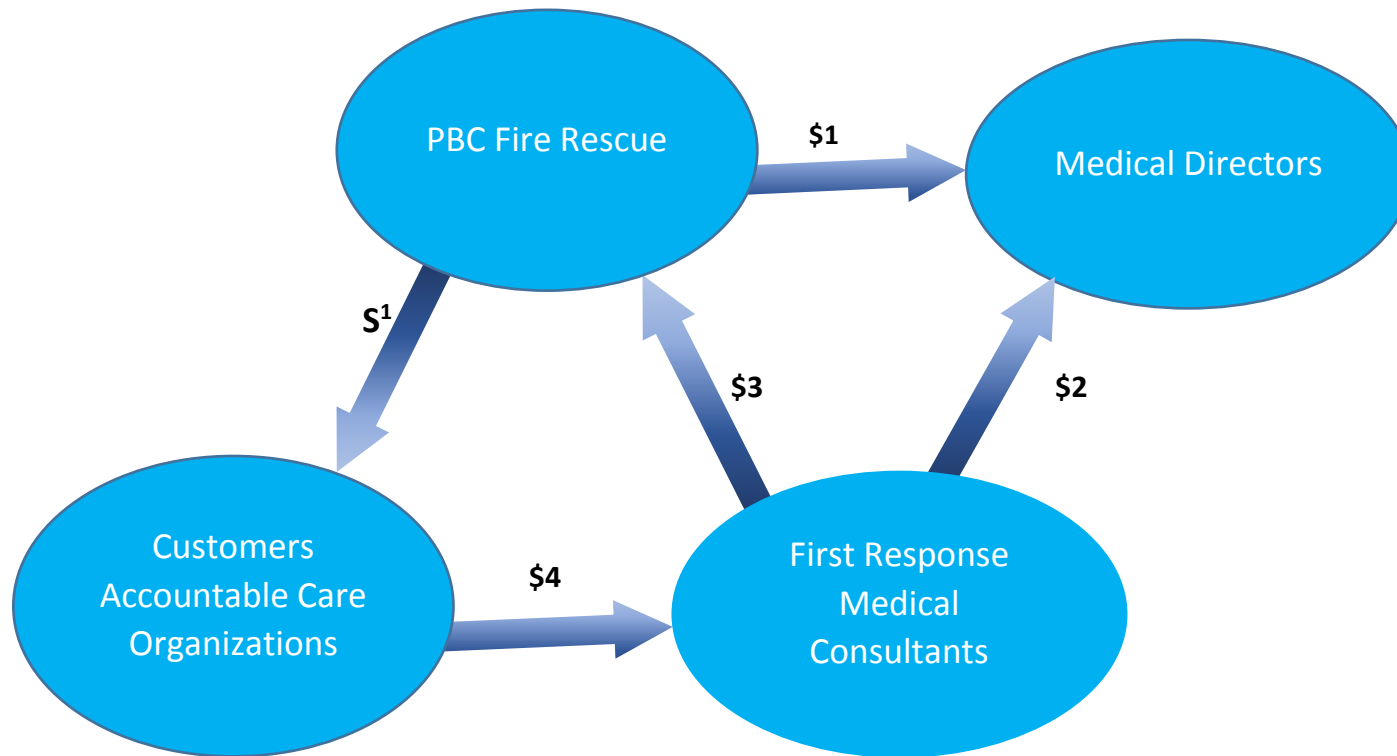
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Mark E. Bannon,  
Executive Director

CEK/gal

### RQO 17-021



**\$1 = Salary**

**\$2 = Profits**

**\$3 = Payment for service (subcontract)**

**\$4 = Payment for service (customers)**

**S<sup>1</sup> = Subcontract services**