

*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*

April 5, 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 2:15pm**  
**Regular Agenda will resume at 4:30pm**

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Nomination and election of Chair
- V. Nomination and election of Vice Chair
- VI. Approval of Minutes from March 1, 2018
- VII. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 18-004
  - b. RQO 18-005
  - c. RQO 18-007
- VIII. Items Pulled from Consent Agenda
  - a.
- IX. Discussion of Advisory Opinion RQO 17-021
- X. Executive Sessions 

		Approximate Start Time
a. C17-012	b. C17-013	2:15
c. C17-014	d. C17-015	2:40
e. C17-021	f. C17-022	3:00
g. C17-025	h. C17-026	3:20
i. C17-035	j. C17-036	3:40
k. C17-038	l. C17-039	4:00
- XI. Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. 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**

**MARCH 1, 2018**

**THURSDAY  
1:33 P.M.**

**COMMISSION CHAMBERS  
GOVERNMENTAL CENTER**

**I. CALL TO ORDER**

**II. ROLL CALL**

**MEMBERS:**

Michael S. Kridel, Chair  
Peter Cruise  
Bryan Kummerlen – Absent  
Rodney Romano  
Sarah L. Shullman

**STAFF:**

Mark E. Bannon, Commission on Ethics (COE) Executive Director  
Christie E. Kelley, Esq., COE General Counsel  
Gina A. Levesque, COE Intake and Compliance Manager

**ADMINISTRATIVE STAFF:**

Leslie Dangerfield, Minutes Clerk, Clerk & Comptroller's Office

**III. INTRODUCTORY REMARKS**

Chair Kridel welcomed new members Peter Cruise and Rodney Romano.

**IV. APPROVAL OF MINUTES FROM FEBRUARY 1, 2018**

**MOTION to approve the February 1, 2018 minutes. Motion by Sarah Shullman, seconded by Michael Kridel, and carried 4-0. Bryan Kummerlen absent.**

**RECESS**

**At 1:35 p.m., the chair declared the meeting recessed for an executive session.**

**V. EXECUTIVE SESSIONS**

**RECONVENE**

**At 2:37 p.m., the meeting reconvened, and at Chair Kridel's request for a roll call, Commissioners Cruise, Romano, and Shullman were present.**

**V.a. C17-009**

Chair Kridel 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 April 19, 2017, alleging that Respondent, Susan Haynie, a City of Boca Raton official, violated §2-444(a)(1) of the Palm Beach County Code of Ethics by accepting a gift with a value greater than \$100 in the aggregate for the calendar year from a person or business entity that she knew, or should have known with the exercise of reasonable care, was a vendor or principal or employer of a lobbyist who lobbies, sells, or leases to the City of Boca Raton.

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. Respondent and Advocate entered into a negotiated settlement wherein Respondent admitted to accepting two tickets to the Lincoln Day Dinner on February 20, 2016, with a value of \$600, from Waste Management, Inc., which is a City of Boca Raton vendor as well as a principal or employer of lobbyists who lobby the City of Boca Raton. Respondent maintains that any such violation was unintentional and inadvertent.

**V.a. – CONTINUED**

On March 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 COE approved the negotiated settlement, determined that the violation was unintentional or inadvertent pursuant to the Advocate's recommendation as well as the Response to the Advocate's recommendation, 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, Susan Haynie, 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 March 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. C17-020**

Chair Kridel 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 June 2, 2017, alleging that Respondent, Susan Haynie, a City of Boca Raton official, violated §2-444(a)(1) of the Palm Beach County Code of Ethics by knowingly accepting a gift from a person or business entity that she knew, or should have known with the exercise of reasonable care, was a lobbyist or principal or employer of lobbyists who lobby the City of Boca Raton.

**V.b. – CONTINUED**

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 March 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 the gift was not from a prohibited source.

Therefore it is:

**ORDERED AND ADJUDGED** that the complaint against Respondent, Susan Haynie, is hereby **DISMISSED**.

**DONE AND ORDERED** by the Palm Beach County Commission on Ethics in public session on March 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 18-002 and RQO 18-003**

**MOTION to approve RQO 18-002 and RQO 18-003. Motion by Peter Cruise and seconded by Sarah Shullman carried 4-0. Bryan Kummerlen absent.**

**VI.b. RQO 18-006**

Commissioner Romano recused himself from voting.

**MOTION to approve RQO 18-006. Motion by Peter Cruise and seconded by Sarah Shullman carried 3-0. Bryan Kummerlen absent.**

**VII. ITEMS PULLED FROM CONSENT AGENDA**

**VII.a. RQO 18-001**

Christie Kelley, COE General Counsel, stated that the item was pulled from consent because additional information was received from Palm Tran, which changed the outcome of the original opinion. She added that:

- A paratransit driver asked if he was prohibited from serving as an advisory board member on the Palm Tran Service Board.
- The code stated that if the advisory board had contract oversight - which the code defined as any oversight, regulation, management, or policy setting recommendations, regarding the subject contract - the appointment to the board must be declined.
- Palm Tran Service Board had contract oversight over the contract between First Transit and the County, and because the board made policy-setting recommendations regarding the contract, the employee was prohibited from serving and must decline the appointment.

In response to Commissioner Shullman, Ms. Kelley stated that a waiver would not be acceptable.

**MOTION to approve RQO 18-001. Motion by Sarah Shullman and seconded by Peter Cruise carried 4-0. Bryan Kummerlen absent.**

**VIII. PROPOSED ADVISORY OPINIONS**

**VIII.a. RQO 17-021**

Ms. Kelley said that:

- The Division Chief of Medical Services for Palm Beach County Fire Rescue (PBCFR) asked if there was a conflict of interest if PBCFR entered into a contract with First Response Medical Consultants (FRMC), LLC.
- The requested contract would allow FRMC to reimburse PBCFR for providing mobile integrated health or community paramedicine services to those enrolled in the FRMC program.

### VIII.a. – CONTINUED

- Staff concluded that under the code, the 2 medical directors who owned FRMC and their outside business were prohibited from entering into any contract with PBCFR where PBCFR would pay the medical directors.
- To avoid violating the code, staff advised refraining from using or referring to their official positions, titles, email, and uniforms while advertising their services to the general public.

Commissioner Shullman stated that:

- The code identified that FRMC was prohibited from entering into a contract with PBCFR where PBCFR would pay the medical directors for their outside business for services rendered.
- In this situation, the prohibited conduct for contractual relationships provision did not limit who was paying whom, only that an employee was prohibited from entering into any contract with their respective county or municipality.

COE Executive Director Mark Bannon stated that the commission had the power to interpret the code. He added that the issue could be postponed.

Chair Kridel stated that the situation created a problematic precedent for other entrepreneurs.

Commissioner Romano stated that there was an appearance of impropriety and a liability was likely.

Commissioner Shullman stated that the code prohibited individuals from entering into a contract with their respective county or municipality, regardless of the direction of the financial transaction.

Commissioner Cruise stated that the public would be concerned with the decision to support the contract.

**MOTION to postpone RQO 17-021 until April 5, 2018. Motion by Peter Cruise and seconded by Rodney Roman carried 4-0. Bryan Kummerlen absent.**

**IX. EXECUTIVE DIRECTOR COMMENTS**

Mr. Bannon stated that:

- All commissioners were given copies of the updated book of rules, regulations and policies. He added that the code had not changed since 2015, but some of the internal policies had changed.
- Ms. Kelley and Chief Investigator Anthony Bennett attended a course on supervision and government offered by the Florida Institute of Government.
- The COE found probable cause in the Ron Jones matter and he elected to use a hearing officer, which did not require COE's involvement. He added that 3 potential hearing officers were approved by local bar associations and the matter would go before the Board of County Commissioners on March 13.
- Commissioner Mary Lou Berger will read a proclamation for April Ethics Awareness Month at that meeting.

**X. COMMISSION COMMENTS – None**

**XI. PUBLIC COMMENTS – None**

**XII. ADJOURNMENT**

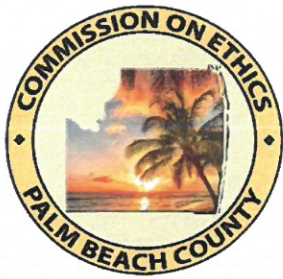
**At 3:10 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair





Honesty - Integrity - Character

# Palm Beach County Commission on Ethics

**Commissioners**

Michael S. Kridel, Chair  
Sarah L. Shullman  
Bryan Kummerlen  
Rodney G. Romano  
Peter L. Cruise

**Executive Director**

Mark E. Bannon

March 28, 2018

Diana Grub Frieser, City Attorney  
City of Boca Raton  
201 W. Palmetto Park Road  
Boca Raton, FL 33432

Re: RQO 18-004  
Conflict of Interest

Dear Ms. Grub Frieser,

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

**QUESTION:**

Does a conflict of interest exist for City of Boca Raton Council Member Andrea O'Rourke where her spouse is employed by Merrill Lynch, a subsidiary of Bank of America Corporation (BOA), when certain banking service agreements and bonds issued by the City of Boca Raton (City) that come before the City Council involve BOA or BOA subsidiaries or entities?

**ANSWER:**

Under the Palm Beach County Code of Ethics, a conflict of interest would exist for Council Member O'Rourke if she or her outside business or employer entered into any contract or other transaction for goods or services with the public entity she serves.<sup>1</sup> The Code defines outside business as an entity in which the official has an ownership interest. An ownership interest means at least five percent of the total assets or common stock are owned by the official or any combination of the official's household members, spouse, and certain other relatives.<sup>2</sup> Here, the City would be entering into contracts or transactions with BOA or BOA subsidiaries or entities. Based on the facts provided, Merrill Lynch, BOA, and the BOA subsidiaries or entities are not the outside businesses of Council Member O'Rourke because she, her spouse, and relevant family members do not own five percent or more of the total assets or common stock of Merrill Lynch, BOA, or any BOA subsidiary or entity. Further, Merrill Lynch, BOA, and any BOA subsidiaries or entities are not the outside employer of Council Member O'Rourke. Therefore, those entities are not Council Member O'Rourke's outside businesses or employers and a prohibited contractual relationship would not occur.

A prohibited conflict of interest would also exist when an official uses his or her official position to give a special financial benefit to specified persons or entities.<sup>3</sup> In addition, the official is prohibited from voting on or participating in any matter that gives a special financial benefit to those same specified persons or entities.<sup>4</sup> Among those prohibited persons or entities is the employer of the official's spouse.<sup>5</sup> Here, Council Member O'Rourke's spouse is employed by Merrill Lynch. Thus, Council Member O'Rourke is prohibited from voting on or participating in any

<sup>1</sup> §2-443(d)

<sup>2</sup> §2-442

<sup>3</sup> §2-443(a)(1-7)

<sup>4</sup> §2-443(c)

<sup>5</sup> §2-443(a)(2); §2-443(a)(4)

matter that gives a special financial benefit to Merrill Lynch. However, the next issue to consider is whether BOA or other BOA subsidiaries or entities would also be considered his employer as well.

The Florida Commission on Ethics has previously held that, in general, corporate subsidiaries and their parent corporation are separate and distinct business entities and a conflict of interest does not exist when an official is employed by a subsidiary and the public entity he or she represents has a contract with the parent company.<sup>6</sup> The few exceptions to this holding by the Florida Commission include situations where the parent company serves as a holding company for the stock of the subsidiary.<sup>7</sup> Similarly, the COE has generally treated a subsidiary corporation and parent corporation or two subsidiaries of the same parent corporation as separate entities and held that a voting conflict does not exist.<sup>8</sup> Based on these previously held opinions of the COE and the Florida Commission on Ethics, Merrill Lynch is the spouse's employer; BOA and its subsidiaries would not be considered the employer of Council Member O'Rourke's spouse.

Therefore, based on the facts provided here, Council Member O'Rourke is not prohibited from voting on or participating in the renewal of or amendments to existing banking service agreements and bonds involving BOA and BOA subsidiaries or entities as long as Merrill Lynch is not also involved in those matters. In addition, she is not prohibited from voting on or participating in new service agreements and bonds involving BOA and other BOA subsidiaries as long as Merrill Lynch is not also involved in those matters.

Where Merrill Lynch is involved in the procurement of these banking services and bond financing arrangements, Council Member O'Rourke must abstain from participating in and voting on the matter, disclose the nature of the conflict, and file a State of Florida Commission on Ethics Conflict Form 8B. As previously discussed, even though Merrill Lynch is not her "outside business" because her spouse is merely employed by them, it is still her spouse's outside employer. Therefore, Council Member O'Rourke cannot vote on any issue that is likely to give a special financial benefit (or loss) to Merrill Lynch.

**FACTS:**

You are the City Attorney for the City of Boca Raton, and you are requesting this opinion on behalf of City of Boca Raton Council Member Andrea O'Rourke, an elected official.

Council Member O'Rourke's spouse is employed by Merrill Lynch as a senior consultant in the wealth management division. Merrill Lynch is a financial planning and wealth management firm that is a wholly owned subsidiary of Bank of America Corporation (BOA). Merrill Lynch is a large corporation with numerous local, national, and international offices. You have been advised that while BOA and Merrill Lynch are separate and distinct corporate entities, they share the same board of directors.

You have also been advised that spouse of Council Member O'Rourke has no role or involvement with the provision of banking or related services to the City by BOA, Merrill Lynch, or other BOA entities, or to the work BOA or other BOA entities perform in relation to banking services or public bond issues.

Currently, the City has three banking services agreements with BOA subsidiaries or BOA entities, which you have been advised are separate and distinct corporate entities from BOA and Merrill Lynch. The three agreements are:

- (1) An agreement for general banking services with Bank of America, NA (Bank), where Bank maintains the City's bank accounts and provides services related to the bank accounts, procurement card services, and treasury management system services. The City's agreement with Bank ends in September but provides for two renewals for two years each.
- (2) An agreement for a procurement card program with FIA Card Services, NA which will expire in August 2019.

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<sup>6</sup> CEO 94-5, CEO 80-89, CEO 05-8, CEO 09-2

<sup>7</sup> CEO 80-25;

<sup>8</sup> RQO 13-005; RQO 15-037

- (3) An agreement for merchant card services with Bank and Banc of America Merchant Services, LLC, which was derived from a master contract awarded by the Florida Department of Financial Services Division of Treasury. The agreement will end in June 2018 but provides for up to five one-year renewals.

If either the banking services agreement or the merchant card services agreement is renewed, such renewal is generally exercised administratively and does not require the approval of the City Council. However, it is likely that the City will procure new banking or related services requiring approval by the City Council and that Bank and other BOA entities will seek to continue providing services to the City.

Council Member O'Rourke has stated that Merrill Lynch does not provide or have any involvement in the provision of the contracted banking services provided by the BOA entities.

In addition, the City is currently seeking to issue revenue bonds through a direct placement with a banking institution. The City's financial advisor has issued a request for proposal to various banking institutions and received a proposal from Bank. The City's financial advisor has made a recommendation to the City Council to award the bonds to another banking institution and not to Bank. The City Council will consider adoption of the bond ordinance and the resolution awarding the bonds during its City Council meeting.

The City anticipate issuance of other bonds in the near future, and it is anticipated that Bank or another BOA entity will again submit proposals for those bonds. Council member O'Rourke stated that Merrill Lynch may have some involvement in the bond financing arrangements, but her spouse has no role or connection with such financing.

**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;
  - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
  - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
  - (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;
  - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
  - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein,


shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

- (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.

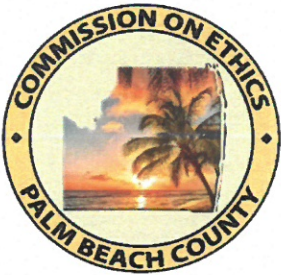
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

**Commissioners**

Michael S. Kridel, Chair  
Sarah L. Shullman  
Bryan Kummerlen  
Rodney G. Romano  
Peter L. Cruise

**Executive Director**  
Mark E. Bannon

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March 12, 2018

Michael Cirullo, Jr., Esq., Town Attorney  
Town of Loxahatchee Groves  
155 F Road  
Loxahatchee Groves, FL 33470

Re: RQO 18-005  
Conflict of Interest

Dear Mr. Cirullo,

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

**QUESTION:**

Does a prohibited conflict of interest exist for Councilman McLendon if he participates in discussions and votes on a developer's Planned Unit Development amendment when Aldi, Inc., a customer or client of his outside business, is listed as one of the potential tenants for the developer's property?

**ANSWER:**

The Palm Beach County Code of Ethics (Code) prohibits officials from using their official position give a special financial benefit to specified persons and entities, including themselves, their outside businesses, and customers or clients of their outside businesses.<sup>1</sup> Additionally, officials must abstain from voting and not participate in any matter which would give a special financial benefit to any of those persons or entities.<sup>2</sup> Financial benefit, in the context of the Code, constitutes economic gain or loss.<sup>3</sup> A customer or client is any entity to which an official's outside employer or business has supplied services in excess of \$10,000 during the previous 24 months.<sup>4</sup> Because Councilman McLendon's outside business, Florida Limited Liability Corporation (FLLC), has supplied goods and services in excess of \$10,000 over the previous 24 months to Aldi, Inc., Aldi is a customer or client of FLLC. Thus, Councilman McLendon cannot use his official position as a Town of Loxahatchee Groves official to give a special financial benefit to himself, FLLC, or Aldi. In addition, he would have a prohibited conflict of interest if he participated in discussions or voted on any matter that would give a special financial benefit to himself, FLLC, or Aldi.

In evaluating whether a conflict of interest exists, the degree to which there is uncertainty at the time of the vote as to whether there would be any economic gain or loss to the prohibited person or entity must be considered.<sup>5</sup> To constitute a prohibited voting conflict, the possibility of a financial gain must be direct

<sup>1</sup> §2-443(a)

<sup>2</sup> §2-443(c)

<sup>3</sup> §2-442

<sup>4</sup> Id.

<sup>5</sup> 112.3143(1)(d), Florida Statutes

and immediate, rather than remote and speculative.<sup>6</sup> Where an official's gain or loss would require many steps and be subject to many contingencies, any gain or loss is remote and speculative and cannot be said to inure to one's special financial benefit.<sup>7</sup> In addition, the Florida Commission on Ethics has previously held that if a gain or loss to an official resulting from a particular measure is too remote and speculative, it does not constitute a special financial benefit.<sup>8</sup>

Based on the facts provided, the Town Council will be voting on whether to approve the developer's amendment to the Planned Unit Development. Although the developer may receive a financial benefit (gain or loss) depending on the outcome of the vote, there is uncertainty as to whether there would be any economic gain or loss to Aldi, FLLC, or Councilman McLendon from this vote. Thus, any financial benefit that Aldi, FLLC, or Councilman McLendon may receive is remote and speculative. Because the vote has no direct and immediate financial benefit to Aldi, FLLC, or Councilman McLendon, he is not prohibited from participating in and voting on this Planned Unit Development amendment application.

**FACTS:**

You are the Town Attorney for the Town of Loxahatchee Groves, and you are requesting this opinion on behalf of Councilman Todd McLendon. Councilman McLendon is the sole owner of Florida Limited Liability Corporation (FLLC). FLLC has provided goods and services to the supermarket chain, Aldi, relating to its warehouse in Palm Beach County. FLLC provides computer-related goods and services for the warehouse's air conditioning system on an as-needed basis and has received over \$10,000 for the previous 24-month period from Aldi.

A developer, Brightview, has filed an application to amend a Planned Unit Development approval for a property located within the Town. Neither Councilman McLendon nor FLLC has any relationship with the developer. The application lists several potential tenants for the property should the amendment application be approved, including Wawa, Chase Bank, and Aldi. The Councilman has no relationship, direct or indirect, with Brightview. The application will require a vote of the Town Council.

Councilman McLendon has also stated that a granting or denial of the application will not likely increase or decrease the work of FLLC for Aldi because the only type of equipment that he services is located in Aldi's warehouse. Further, Councilman McLendon stated that the current warehouse is oversized for the current retail locations. Councilman McLendon is unaware of the specific contract relationship between the developer and Aldi.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-442, §2-443(a), 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).

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<sup>6</sup> George v. City of Cocoa, Florida, 78 F.3d 494 (1996).

<sup>7</sup> RQO 12-063, CEO 05-15, CEO 91-61, CEO 12-19

<sup>8</sup> CEO 85-77 (school board member who owned business near the site of a proposed school district building was not prohibited from voting on the matter); CEO 85-87 (city council member was not prohibited from voting on a site plan for a shopping center which was to be located adjacent to the florist store which he owned)

**Financial benefit** includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value.

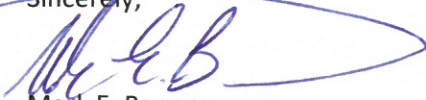
**Sec. 2-443. Prohibited conduct.**

- (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).

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

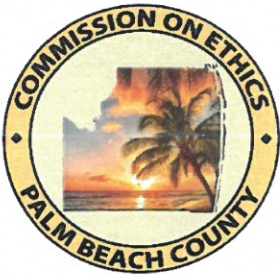
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

**Commissioners**

Michael S. Kridel, Chair  
Sarah L. Shullman  
Bryan Kummerlen  
Rodney G. Romano  
Peter L. Cruise

**Executive Director**

Mark E. Bannon

*Honesty - Integrity - Character*

March 12, 2018

Michael Landress, EMS Coordinator  
City of Boynton Beach Fire Rescue  
2080 High Ridge Road  
Boynton Beach, FL 33426

Re: RQO 18-007  
Gift Law

Dear Mr. Landress,

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:**

May the City of Boynton Beach Fire Rescue Department accept a scholarship from the Health Care Institute of Palm Beach County (HCI), a vendor of the City of Boynton Beach, which will be awarded to a Fire Rescue Department employee to earn an Associate of Science Degree in Emergency Medical Services from HCI free of charge?

**ANSWER:**

The Palm Beach County Code of Ethics prohibits a public employee from accepting any gifts with a value exceeding \$100, annually in the aggregate, from vendors doing business with the employee's public employer.<sup>1</sup> Here, the tuition scholarship is from a City vendor and exceeds \$100 in the aggregate. However, the Code specifically exempts gifts accepted by public employees on behalf of their government for a public purpose.<sup>2</sup> Whether a matter meets the definition of a public purpose must be determined by the administration or by the governing body of the municipality.<sup>3</sup>

Based upon the facts submitted, the City's Fire Department administration or the City Council must determine whether the award of the scholarship for an employee to earn an Associate of Science Degree in Emergency Medical Services would be for a public purpose. If the tuition scholarship is determined to have a public purpose, then the City Fire Department is not prohibited from accepting the scholarship from HCI, a City vendor. If it is not determined to have a public purpose, then the acceptance of the scholarship is prohibited.

**FACTS:**

You are the EMS Coordinator for the City of Boynton Beach Fire Rescue Department. The Health Care Institute of Palm Beach County (HCI) would like to donate a scholarship to your department, which will then be awarded to one of the department's firefighter-paramedic employees. The scholarship recipient will allow an employee to complete HCI's Associate of Science Degree in Emergency Medical Services free of charge. The recipient of the scholarship will most likely be selected by the Fire Rescue Department's chief officers after a written assignment and interview are completed. You believe the cost of the program is approximately \$2,000.

<sup>1</sup> §2-444(a)

<sup>2</sup> §2-444(g)(1)e.

<sup>3</sup> RQO 12-062; RQO 12-044; RQO 11-084



HCI is a vendor of the City of Boynton Beach. The city pays HCI to teach emergency medical services classes to its employees in the Fire Rescue Department. In addition, the City allows HCI paramedic students to fulfill their clinical ride-time requirements with your department.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-444(a)(1) and §2-444(g)(1)e. of the Code:

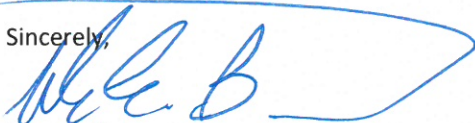
**Sec. 2-444. Gift law**

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.
- (1) Exceptions. The provisions of subsection (g) shall not apply to:
- e. Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose;

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts 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. It is not applicable to any conflict under state law.** Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,



Mark E. Bannon  
Executive Director

CEK/gal

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.

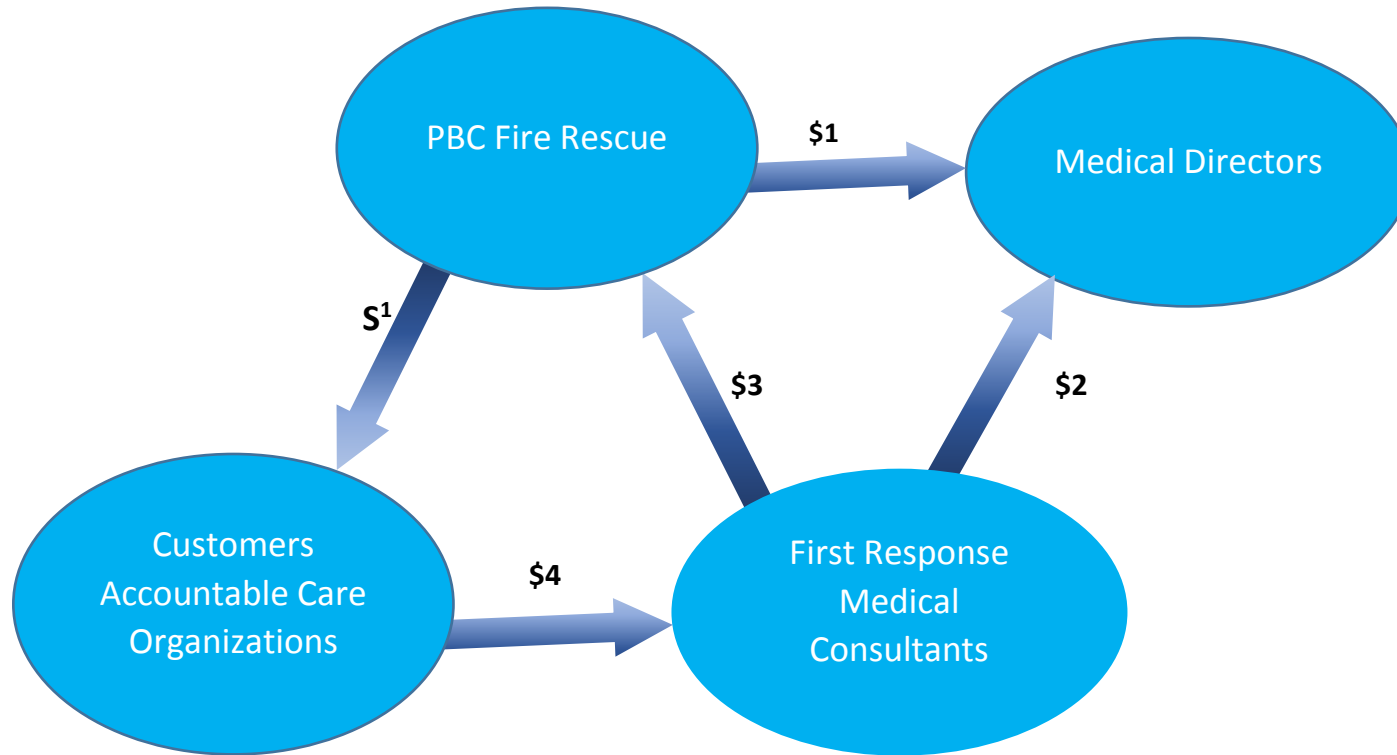
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

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**