



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

561.355.1915

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Commissioners

Sarah L. Shullman, Chair

Bryan Kummerlen, Vice Chair

Michael S. Kridel

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

September 6, 2018 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from August 2, 2018
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 18-014
 - b. RQO 18-016
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Executive Director Comments
- VIII. Commission Comments
- IX. Public Comments
- X. 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**

AUGUST 2, 2018

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

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

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 JULY 12, 2018

MOTION to approve the July 12, 2018 minutes. Motion by Rodney Romano, seconded by Michael Kridel, and carried 4-0. Peter Cruise absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 18-012

b. RQO 18-013

MOTION to approve the consent agenda. Motion by Michael Kridel, seconded by Rodney Romano, and carried 4-0. Peter Cruise absent

VI. ITEMS PULLED FROM CONSENT AGENDA – None

RECESS

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

VII. EXECUTIVE SESSION C17-001

RECONVENE

At 2:12 p.m., the meeting reconvened, and at Chair Sara Shullman's request for a roll call, Vice Chair Kummerlen, and Commissioners Michael Kridel, and Rodney Romano were present.

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

Complainant, Jason Wasielewski, filed the above referenced complaint on February 2, 2017, alleging that Respondent, Joey Cooper, a Palm Beach County Fire Rescue employee, violated §2-443(a), §2-443(b), and §2-445 of the Palm Beach County Code of Ethics.

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 August 2, 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, the Commission concluded no probable cause exists to believe a violation occurred.

VII. – CONTINUED

Therefore, it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Joey Cooper, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on August 2, 2018.

By: Sarah L. Shullman, Chair

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

VIII. EXECUTIVE DIRECTOR COMMENTS

VIII.A.

DISCUSSED: C17-002.

Mark Bannon, COE Executive Director, said that:

- The C17-002 public hearing was the second public hearing to take place since the COE began and the first one in which a hearing officer was utilized.
- Hearing Officer Christy Goddeau did not find sufficient evidence that Mr. Jones committed a Code of Ethics (Code) violation because the standard for finding a Code violation was clear and convincing evidence.
- Ms. Goddeau should be thanked for volunteering to serve as hearing officer in C17-002, along with Advocate Dodger Arp and COE staff.

IX. COMMISSION COMMENTS

IX.A.

DISCUSSED: Hearing Officer Goddeau's Finding.

IX. – CONTINUED

IX.A. – CONTINUED

Commissioner Romano requested a clarification that the hearing officer's finding was not a finding of innocence but of insufficient evidence to find Mr. Jones guilty.

Mr. Bannon stated that Ms. Goddeau found that the COE did not meet the burden of clear and convincing evidence of a violation, but in the final order, she noted that some of the findings of facts showed that issues existed.

IX.B.

DISCUSSED: Staff Commendation.

Chair Shullman commended staff for their preparatory work ahead of a meeting.

X. PUBLIC COMMENTS – None

XI. ADJOURNMENT

At 2:18 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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

Executive Director
Mark E. Bannon

August 31, 2018

Ms. Tinú Peña
Capital Improvement Plan Manager
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33401

Re: RQO 18-014
Conflict of Interest

Dear Ms. Peña,

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 conflict of interest exist for you if:

- (1) the business entities that you and your outside business normally work with enter into contracts to provide goods or services with the City of West Palm Beach (City), or
- (2) your outside business was hired as a subcontractor by business entities who are vendors of the City to work on projects for the county or other municipalities, except the City?

ANSWER:

Question 1

The Palm Beach County Code of Ethics (the Code) prohibits you from using your official position with the City of West Palm Beach, as well as influencing others to take or fail to take any action, to give a special financial benefit to specified persons or entities.¹ Among those specified persons are yourself, your outside business, or a customer or client of your outside business.² A customer or client is any entity to which your outside business has supplied goods or services in excess of \$10,000 during the previous 24 months.³ The Code also prohibits you from using your official position to corruptly secure a special benefit for anyone.⁴ Corruptly is defined as an act that is done with a wrongful intent and inconsistent with the proper performance of your public duties.

Based upon the facts submitted, the relationship between your outside business and the entities that your outside business has worked with in the past is that of a typical contractor/sub-contractor. However, because you have not provided over \$10,000 in goods or services to any of these entities in the previous

¹ §2-443(a)

² Id.

³ §2-442

⁴ §2-443(b)

twenty-four (24) months, under the Code, they are not customers or clients of your outside business. Therefore, based upon these facts provided, as long as you do not use your official position as the Capital Improvement Plan Manager to give yourself or your outside business a special financial benefit, a prohibited conflict of interest would not exist for you if any of the entities that your outside business normally works with enter into contracts with the City.

Question 2

The Code prohibits you, directly or indirectly, and your outside employer or business from entering into any contract or other transaction for good or services with the City.⁵ According to the information provided, you are aware that the Code prohibits your outside business from entering into any contracts with the City. You are also aware that by working as a subcontractor on a project for the City, you would have an indirect contractual relationship with the City and such a relationship would be prohibited.⁶

The entities that your outside business has worked with in the past may wish to hire your business to work as a subcontractor on their projects for the county and other municipalities. However, although you are prohibited from working as a subcontractor on projects for the City, the contractual relationship provision of the Code does not prohibit you from working as a subcontractor on projects for the county and other municipalities. As stated above, the Code prohibits you and your outside employer from providing goods or services to the City. Here, when you work as a subcontractor for these business entities that are vendors of the City, they are not your outside employer as defined by the Code. The Code defines an outside employer as “[a]ny entity...of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced.”⁷ Based on the information provided, because you are not a member, official, director, proprietor, partner, or employee of the business entities that hired your outside business to perform work as a subcontractor, then those entities are not your outside employer. Because those entities are not your outside employer, the Code does not prohibit you or your outside business from working as a subcontractor on their projects for the county or other municipalities.

FACTS:

You are the owner of Motré, Co. LLC, an engineering consulting company in Palm Beach County. Your company is actively engaged in project pursuits within Palm Beach County and with municipalities within the county, except the City of West Palm Beach. As the owner of Motré, Co. LLC, you have developed business relationships with certain companies in the county. Some of these entities contract with the City of West Palm Beach, as well as with other municipalities and the county. Your business has been hired in the past as a subcontractor or sub-consultant on the entities’ projects. However, your business is not currently performing work for the City of West Palm Beach as a subcontractor on a contract. Additionally, your business has not provided goods or services in excess of \$10,000 in the prior 24 months to any of the business that conduct work for the City of West Palm Beach.

You recently became the Capital Improvement Plan Manager for the City of West Palm Beach. The Capital Improvement Plan Manager coordinates and implements the City’s Capital Improvement Plan, including roadway, drainage, traffic, water, wastewater, storm water, parks, and City facilities. Currently, in your

⁵ §2-443(d)

⁶ RQO 10-038

⁷ §2-442

position with the City of West Palm Beach, you do not participate in the selection of the entities hired to perform work for the City. Additionally, you do not review or supervise the work of those selected entities.

Upon employment with the City, you signed a conflict of interest form which prohibits your outside business from entering into any contracts with the City. You are aware that the Code prohibits your outside business from entering into any contracts with the City of West Palm Beach.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

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

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal, regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses;

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.

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



Palm Beach County Commission on Ethics

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

Executive Director
Mark E. Bannon

August 31, 2018

Ms. Virginia Williams
HRIS Specialist – Human Resources Department
100 Australian Ave, 3rd Floor
West Palm Beach, FL 33406

Re: RQO 18-016
Conflict of Interest/Contractual Relationship

Dear Ms. Williams,

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 it violate the Palm Beach County Code of Ethics (Code) if you register your business with Palm Beach County's Small Business Enterprise (SBE) program?

ANSWER:

The Code prohibits public employees from using their official positions in any way to give a special financial benefit to specified persons or entities, including themselves, their children, and their outside businesses.¹ The Code defines an outside business as an entity in which the employee has an ownership interest.² An employee has an ownership interest if at least five percent of the total assets are owned by the employee or any combination of the employee's household members or certain relatives, including children. Further, the Code prohibits public employees from using their official position to corruptly secure a special benefit for anyone.³ Corruptly is defined as "done with a wrongful intent and...inconsistent with the proper performance of his or her public duties."⁴

Based upon the facts submitted, you and your daughter own Jazzy Juice Joint, LLC (Jazzy Juice) together. Because your ownership interest exceeds five percent, Jazzy Juice is your outside business. As an owner of the business, you are prohibited from using your official position with Palm Beach County in any way to give a special financial benefit to yourself, your daughter, or Jazzy Juice. These prohibitions include taking any action to influence or speed up the application and approval process for your business. Here, any business is eligible for the Palm Beach County SBE Certification as long as the business meets the SBE's specified criteria. Thus, as long as you use the proper channels available to all members of the general public and do not influence the process, you are not prohibited from registering your business as a small business with Palm Beach County.

¹ §2-443(a)

² §2-442

³ §2-443(b)

⁴ Id.

Although the Code does not prohibit you from registering your outside business for the SBE Certification and attending events hosted by SBE, you are reminded that the Code prohibits you or your outside business from entering into any contracts or transactions for goods or services with your public employer, unless an exception applies.⁵ Based on the information provided, several of the exceptions do not apply. As one of the owners of the outside business, you are not eligible for a part-time employment waiver⁶, you and your business are not the sole source of food truck services in the county⁷, the goods or services of your outside business would not constitute an emergency purchase⁸, and the services of your business is unlikely to be involved in a contract that involves the process of sealed, competitive bidding.⁹

However, one exception may apply to your situation. Section 2-443(e)(4) provides an exception when the total amount of the contracts or transactions in the aggregate between an employee's outside business and their public employer does not exceed \$500 per calendar year. Therefore, if the total amount of your outside business's contracts or transactions with the county would not exceed \$500, in the aggregate, then Jazzy Juice would not be prohibited from providing goods or services to the county.

FACTS:

You are an HRIS Specialist with Palm Beach County Human Resources. You and your daughter are also the owners of Jazzy Juice Joint, LLC, a catering and events food truck offering healthy food choices, such as fresh-pressed juices, smoothies, soups, salads, and wraps. Your daughter is the primary full-time operator of the food truck; you assist on evenings and weekends. You and your daughter would like to register for the SBE Certification with Palm Beach County. Some of the benefits of receiving the SBE Certification include being listed in the Office of Small Business Assistance on-line directory, which can be a useful marketing tool, and invitations to attend events hosted by the SBE. The SBE Certification application also allows businesses to simultaneously register for a Minority-Owned and/or Women-Owned Business certification.

To register for the Palm Beach County SBE Certification,

- the business must be registered as a vendor with the Palm Beach County Purchasing Department,
- the business must be domiciled in Palm Beach County,
- gross receipts, averaged over 3 years can be no more than:
 - Construction: \$9 million
 - Professional Services (CCNA Required): \$5 million
 - Commodities: \$5 million
 - Professional Services (CCNA Not Required): \$4 million,
- the business must be independently owned and operated, and
- the company must provide a commercially useful business function for Palm Beach County procurement purposes.

LEGAL BASIS:

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

⁵ §2-443(d), §2-443(e)

⁶ §2-443(e)(5)

⁷ §2-443(e)(3)

⁸ §2-443(e)(2)

⁹ §2-443(e)(1)

Sec. 2-442. Definitions.

Outside employer or business includes:

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

Sec. 2-443. Prohibited conduct.

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

- (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.

- (e) **Exceptions and waiver.**
 - (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,

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

Mark E. Bannon,
Executive Director

CEK/gal