



*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**

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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*

January 10, 2019 – 1:30 p.m.  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from November 1, 2018
- V. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 18-017
  - b. RQO 19-001
  - c. RQO 19-002
- VI. Items Pulled from Consent Agenda
  - a.
- VII. Presentation of 2018 Annual Report
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. Adjournment

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

**NOVEMBER 1, 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 - Absent  
Peter L. Cruise  
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 OCTOBER 4, 2018**

**MOTION to approve the October 4, 2018 minutes. Motion by Peter Cruise, seconded by Michael Kridel, and carried 4-0. Bryan Kummerlen absent.**

## V. SUNSHINE LAW PRESENTATION

Christie E. Kelley, COE General Counsel, said that:

- The Sunshine Law, found in Florida Statutes (F.S.), Chapter 8.286, protected the public from closed-door decision-making and provided access rights to all government-related meetings.
- The Sunshine Law contained 3 requirements:
  - All meetings must be opened to the public.
  - Reasonable meeting notices must be given.
  - Meeting minutes must be kept.
- A meeting was defined as a gathering of 2 or more board members where a matter was discussed, which would foreseeably come before the board for action.
  - The public had a right to attend and make comments at all open meetings, but reasonable time limits should be designated.
  - Board members could gather socially as long as they did not discuss a matter coming before the board.
  - Board members could speak to staff about matters coming before the board, but they could not ask them what other board members said or discussed or ask them to convey to other board members how they felt about a matter coming before the board.
  - Probable cause hearings did not need to be open to the public unless a respondent waived that right.
  - At the beginning of each year, all COE meeting dates and locations were published on the Web site, and on the Board of County Commissioners' (BCC) calendar. The agenda was generally posted 7 days before a scheduled meeting.

## V. – CONTINUED

- Meeting minutes were transcribed by a minutes clerk and available for public inspection after board approval.
- Retained audio recordings also could be utilized.
- All votes should be taken publicly, all board members must vote unless they had a conflict of interest, and the minutes must reflect the votes.
- Any official who violated the Sunshine Law was guilty of a second-degree misdemeanor punishable by up to 60 days in jail and a \$500 fine, along with possible removal from the position.
- Any action taken at an illegal meeting would be invalid.
- F.S. Chapter 119 created a right of access to records made or received regarding the official business of a public body.
  - Public records were defined as all documents, papers, letters, tapes, photographs, films, sound recordings, or other materials, regardless of physical form or means of transmission, made or received in connection with the transaction of official business by the agency.

Commissioner Romano inquired whether the definition of a meeting was met if 2 city commissioners, who were running as opponents, attended a public debate that included issues that would later come before them for a vote.

Richard Radcliffe, Executive Director of the Palm Beach County League of Cities (League), responded that:

- The scenario described by Commissioner Romano was discussed during a training session.
- The attorney who taught the training session said that the Sunshine Law would be violated if candidates attended candidate forums and discussed matters that later would be determined by them at a council meeting.

## V. – CONTINUED

- Another factor precluding a candidate forum or public debate from being considered a meeting was that minutes were not usually taken at those events.
- Similar scenarios had never been litigated, nor had advisory opinions been issued by the courts.

Commissioner Kridel requested that Ms. Kelley provide a copy of her PowerPoint presentation to the BCC.

## VI. EXECUTIVE DIRECTOR COMMENTS

### VI.A.

**DISCUSSED:** Excellence in Supervision, Region 7 All-Hazard Incident Management Team, Ethics Governance Day, and the Passing of Judge Edwards Rogers.

Mark E. Bannon, COE Executive Director, said that:

- Anthony Bennett, COE Chief Investigator, completed the Excellence in Supervision class.
- Gina Levesque, COE Intake and Compliance Manager, spent 11 days in the Florida Panhandle with the Region 7 All-Hazard Incident Management Team helping those affected by Hurricane Michael.
- Chair Shullman, Ms. Kelley, and others participated in last week's first Annual Ethics Governance Day at Forest Hill High School.
- Judge Rogers passed away last week.

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## **VII. COMMISSION COMMENTS**

### **VII.A.**

**DISCUSSED:** Bethesda-by-the-Sea Ethics Workshops.

Commissioner Cruise said that the Bethesda-by-the-Sea Church in the Town of Palm Beach would hold ethics workshops every Wednesday beginning in the fall.

### **VII.B.**

**DISCUSSED:** Ethics Governance Day.

Chair Shullman said that:

- Government ethics was broadly discussed during the Ethics Governance Day.
- Panel members included a Palm Beach County School Board member, a public defender, a State prosecutor, a judge, County Mayor Melissa McKinlay, and the Criminal Justice Association president.

### **VII.C.**

**DISCUSSED:** Judge Rogers and Ethics in the Legal Profession.

Commissioner Romano stated that he had practiced law before Judge Rogers, who was a leader in human and civil rights. He added that trial lawyers who professionally and ethically practiced law achieved better verdict results for their clients.

## **VIII. PUBLIC COMMENTS**

### **VIII.A.**

**DISCUSSED:** Judge Rogers and Commendation.

Mr. Radcliffe said that Judge Rogers, who was the first COE chair, would be missed. He added that Mr. Bannon received excellent reviews after conducting the League's ethics training sessions for municipal officials.

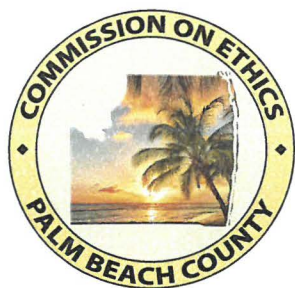
**IX. ADJOURNMENT**

**At 1:57 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair



# 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

December 5, 2018

Mr. Robert Sugarman  
100 Miracle Mile, Suite 300  
Coral Gables, FL 33134

Re: RQO 18-017  
Conflict of Interest

Dear Mr. Sugarman,

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 members of the Board of Trustees of the City of Boca Raton Police and Firefighters' Retirement System (BRPFERS), who are either City of Boca Raton (City) officials or employees, violate the prohibited conduct section or the gift law section of the Palm Beach County Code of Ethics (Code) if the BRPFERS accepts reimbursement of travel expenses from their investment consultant for the members' attendance at his conference?

**ANSWER:**

The Code prohibits a public employee as well as a "county commissioner, member of a local governing board, mayor, or chief executive when not a member of the governing body" from accepting, directly or indirectly, any gift over \$100 in the aggregate for the calendar year from any person or business entity that the employee knows or should know with the exercise of reasonable care is a vendor, lobbyist, or principal or employer of a lobbyist who lobbies, sells or lease to his or her public employer or the governmental entity he or she serves.<sup>1</sup>

The four City residents who were appointed by the City Council are officials under the Code,<sup>2</sup> but they are not one of the persons specified under Section 2-444(a)(1) who are prohibited from accepting gifts from vendors, lobbyists, or principals or employers of lobbyists. As such, only the City employees who are serving as trustees on the BRPFERS are prohibited from accepting, directly or indirectly, any gift over \$100 in the aggregate for the calendar year from any person or business entity that the City employees know or should know with the exercise of reasonable care is a vendor, lobbyist, or principal or employer of a lobbyist who lobbies, sells or lease to the City.

<sup>1</sup> §2-444(a)(1)

<sup>2</sup> RQO 11-060



The Code also prohibits both City officials and employees from accepting, directly or indirectly, any travel expenses from any City contractor, vendor, service provider, bidder, or proposer.<sup>3</sup> Examples of travel expenses include transportation, lodging, and registration fees.

Based on the facts provided, the investment consultant who will provide the reimbursement for the conference is not a City vendor and is not a lobbyist or principal or employer of a lobbyist who lobbies the City. Therefore, Section 2-444(a)(1) of the Code does not prohibit the City employees who serve on the BRPFRS from accepting any gift over \$100 from the investment consultant. Further, the investment consultant is also not a City contractor, service provider, bidder, or proposer. Thus, Section 2-443(f) of the Code does not prohibit the City employees and officials serving as trustees on the BRPFRS from accepting travel expenses, directly or indirectly, from the investment consultant. Therefore, the prohibited conduct section and the gift law section of the Code would not be violated by the BRPFRS trustees if the BRPFRS accepts reimbursement of travel expenses from their investment consultant for the trustees' admission to the conference.

The next issue that must be addressed is whether the reimbursement must be reported by the BRPFRS trustees as a gift. The Code defines a "gift" as "the transfer of anything of economic value..."<sup>4</sup> Under Section 2-444(f), gifts from a non-prohibited source valued at over \$100 must be reported, unless one of several exceptions apply. However, the definition of "gift" under the Code specifically excludes registration fees and other related costs associated with educational or governmental conferences or seminars where attendance is for governmental purposes and attendance is related to the public duties and responsibilities of the employee or official.<sup>5</sup>

Based on the facts provided, the trustees are required by Section 112.661(14), Florida Statutes, to attend continuing education seminars and conference. Here, the BRPFRS trustees will be attending the conference to satisfy the continuing education requirements of the state statute, and, thus, their attendance is for a governmental purpose. Further, the attendance is related to their duties as trustees on the BRPFRS. Therefore, the reimbursement meets the requirements of Section 2-444(g)(1) h. of the Code, and the reimbursement to BRPFRS from the investment consultant is not considered a "gift" under the Code and does not need to be reported by the trustees.

#### **FACTS:**

Your law firm represents the BRPFRS. BRPFRS was established by Chapter 12, Article IV of the Code of Ordinances of the City of Boca Raton and Chapters 175 and 185, Florida Statutes, to provide retirements, death, and disability benefits to the police officers and firefighters employed by and retired from the City. The BRPFRS is comprised of eight volunteer trustees. Four are City residents appointed by the City Council, and four are City employees who are elected by their colleagues. Time spent on BRPFRS matters is considered part of the City employees' duties, and they are paid by the City for their time on the board.

Pursuant to Sections 175.071(6)(a) and 185.06(5)(a), Florida Statutes, the trustees have retained an investment consultant who evaluates the performance of BRPFRS's professional money managers and makes recommendations to BRPFRS regarding the selection of money managers. Pursuant to Section 112.661(14), Florida Statutes, the trustees regularly attend continuing education seminars and conferences that deal with issues related to investments and to the trustees' responsibilities as a fiduciary of BRPFRS.

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<sup>3</sup> §2-443(f)

<sup>4</sup> §2-444(g)

<sup>5</sup> §2-444(g)(1)h.

Periodically, the investment consultant hosts a conference, the Client Research & Educational Summit, to which the consultant invites his clients, including the trustees. BRPFRS has determined that the educational conference proposed by the consultant constitutes an appropriate continuing education opportunity with the meaning of Section 112.661(14), Florida Statutes. The consultant has offered, unsolicited by PRPFRS, to pay for the airfare, lodging, meals, transportation, and entertainment for any of the client trustees who attend the conference. The consultant stated that the cost of the conference is included in the fees it charges to its clients.

The BRPFRS trustees have declined this invitation. The BRPFRS will instead pay for the trustees' airfare, lodging, meals, and transportation, as it does for all continuing education conferences the trustees attend. The trustees will pay for any entertainment costs on their own. The investment consultant has now offered to refund BRPFRS the amount it will pay for the trustees to attend the consultant's conference.

The consultant has certified to the trustees that the consultant is not a vendor of the City, a lobbyist or principal or employer of a lobbyist who lobbies the City, or a City contractor, service provider, bidder, or proposer. The COE has previously opined in RQO 11-060 that, although BRPFRS is not a City advisory board, BRPFRS trustees appointed by the City Council and the City employees elected by fellow employees are under the jurisdiction of the Code while serving on the board and that "code sections involving acceptance of travel expenses apply only where the travel expenses or gifts involve vendors, contractors, bidders, proposers, service providers who do business with the City of Boca Raton. Likewise, the \$100 gift limitation involving the solicitation or acceptance of gifts only applies to vendors or lobbyists who lobby, sell, or lease to the City." The COE also stated that "[t]hese regulations do not extend to those doing business exclusively with the BRPFRS, which is not a board created by the City."

#### **LEGAL BASIS:**

The legal basis for this opinion is found in §2-443(f), §2-444(a)(1), and §2-444(g)(1)h. of the Code:

#### **Sec. 2-443. Prohibited Conduct.**

(f) Accepting travel expenses. No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.

#### **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. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

(1) Exceptions. The provisions of subsection (g) shall not apply to:

- h. Registration fees and other related costs associated with educational or governmental conferences, meetings or seminars and travel expenses either properly waived or inapplicable pursuant to section 2-443(f), provided that attendance is for governmental purposes, and attendance is related to their duties and responsibilities as an official or employee of the county or municipality;

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

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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

January 4, 2019

Lynn Gelin, Esq., Deputy City Attorney  
City of Delray Beach  
200 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

Re: RQO 19-001  
Contractual Relationship/Misuse of Public Office or Employment

Dear Ms. Gelin,

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 Contractual Relationships section of the Palm Beach County Code of Ethics (Code) for the father-in-law of a City of Delray Beach (City) employee to enter into an agreement with the City to rent a residence he owns to an unrelated person, and accept funds from the City's rental assistance program on behalf of the potential renter, where the City employee himself or his wife has no ownership or other legal interest in the subject property?

**ANSWER:**

Such an arrangement would not violate the Contractual Relationships section of the Code, as the City employee has no ownership or other legal interest in the subject property. However, the City employee may not take any official actions to assist his father-in-law or the proposed renter in this arrangement or to influence the approval or disbursement process, as such actions could violate the Misuse of Public Office or Employment section of the Code.

In general, the Code prohibits public officials and employees from entering into contractual relationships with their public agency, directly or indirectly, unless one of the exceptions to this prohibition apply.<sup>1</sup> While the employee's father-in-law will have to enter into an agreement with the City to receive these rental assistance funds, the employee himself has no ownership or other legal interest in the subject property and will not obtain a financial benefit from this agreement. Therefore, the contractual relationship prohibition does not apply.

Further, the Code prohibits public officials or employees from using their official position in any way to give a special financial benefit to specified persons or entities, including the parents of his or her spouse.<sup>2</sup> Rental assistance funds are paid to the homeowner on behalf of the proposed renter of the property only when the renter has been approved by the City's Neighborhood Services Department for rental assistance,

<sup>1</sup> §2-443(d)

<sup>2</sup> §2-443(a)(3)

and after an inspection of the property by a Rehabilitation Inspector from Neighborhood Services. Although the employee works for a different City Department (Code Enforcement Department), he is prohibited from using his position as a City employee in any manner to assist his father-in-law or the proposed renter with the application for or the award of these funds from the Neighborhood Services Department, including to influence the inspection of the property. The employee must allow the process to take its normal course as it would with any other applicant for rental assistance, or for any residential property owner wishing to participate in the program. Any use of his position as an employee to assist either party in this process would likely violate the Misuse of Public Office or Employment section of the Code.

**FACTS:**

You are the Deputy City Attorney for the City of Delray Beach. On behalf of a City employee and the City's Neighborhood Services Department, you have asked for an advisory opinion on a matter related to the City's rental assistance program.

The City offers a one-time payment as rental assistance for qualified applicants through a program overseen by the Neighborhood Services Department. This assistance covers payments to a residential property owner on behalf of the proposed renter that cover the first and last month's rent, as well as any security deposit required. In order to take advantage of this program, a potential renter must complete an application requesting assistance, and if approved, must then locate a residential property available for rent within the City. The property owner would then enter into an agreement with the City to accept this payment on behalf of the proposed renter. One such approved renter has located an available property owned by the father-in-law of a City employee.

The City employee does not work in the Neighborhood Services Department, but works in the Code Enforcement Department. This employee also has no ownership or other legal interest in the property, nor does his spouse. The employee has no approval or other authority over this program for either party, and is not involved in the disbursement of payments to the property owner by the City. And, while the residential property is required to be inspected prior to the dispersal of funds to the property owner, this inspection is completed by a Rehabilitation Inspector within the Neighborhood Services Department, not by the Code Enforcement Department.

**LEGAL BASIS:**

The legal basis for this opinion is found in §2-443(a) 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:

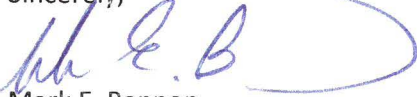
(3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, ***or of his or her spouse or domestic partner***, or the employer or business of any of these people; (emphasis added)

- (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.

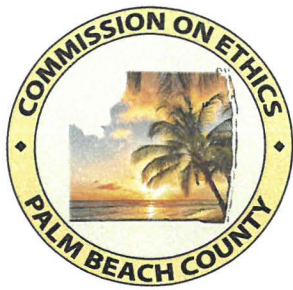
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

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Bryan Kummerlen, Vice Chair  
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Michael S. Kridel  
Peter L. Cruise

**Executive Director**

Mark E. Bannon

January 4, 2019

Ms. Tessa McKay, Human Resources  
Village of Tequesta  
345 Tequesta Drive  
Tequesta, FL 33469

Re: RQO 19-002  
Gift Law

Dear Ms. McKay,

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 employees of the Village of Tequesta (Village) accept a discounted gym membership rate being offered by a local business without violating the Palm Beach County Code of Ethics (Code)?

**ANSWER:**

So long as the local business is offering the discounted rate to all Village employees and not to a specific individual or group of Village employees and the discounted membership rate is not offered as a *quid pro quo* for an official public action or the past, present or future performance of any legal duty, Village employees would not be prohibited from accepting this discount under the Code unless the provider was a lobbyist, principal, or employer of a lobbyist who lobbies the Village and the discount value exceed \$100 annually in the aggregate.

A "gift" is defined within the Code as, "*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.*"<sup>1</sup> This would include a "discount" given to public employees based on their employment.

The COE has previously held that if the provider of a gift is a *vendor* of the governmental employer, but offers a discount to all employees of that governmental entity and not to only select employees or officials, even where the gift exceeds the maximum gift amount of \$100 annually in the aggregate, it falls within the exception found in the Gift Law for "*Publically advertised offers for goods and services from a vendor under the same terms and conditions as are offered or made available to the general public.*"<sup>2</sup> When all employees of a governmental entity are offered such a discount, and the discount is not directed to a select individual or group of individuals singled out to receive a special discount not available to other *similarly situated* employees of this public employer, this exception applies.

<sup>1</sup> §2-444(g)

<sup>2</sup> RQO 11-054, §2-444(g)(1)(f)

However, the exception applies only to *vendors* of the applicable local government. It does not apply to lobbyists, principals or employers of lobbyists who lobby that local government employer. Gifts valued at greater than \$100 annually in the aggregate from lobbyists, principals, or employers of lobbyists who lobby the applicable government entity are still prohibited under the Code.

Based on the facts provided here, the provider is neither a vendor nor a lobbyist, principal, or employer of a lobbyist that lobbies the Village, therefore, there is no prohibition against accepting such a discount as a gift, so long as there is no *quid pro quo* offered or given in return to the provider for the discount.<sup>3</sup> However, while the discount amount offered is currently valued at less than \$100 annually, if this amount changes, or if the discount is extended to other family members based on a Village employees public employment causing the "gift" value to be more than \$100 annually, the following reporting requirements would apply.

If the overall discount accepted by any non-state reporting employee is valued at more than \$100 annually in the aggregate for the yearly gift reporting period (November 1<sup>st</sup> to October 31<sup>st</sup>), those employees that choose to accept this discount may be required to file an annual gift disclosure report and submit it to the Palm Beach County Commission on Ethics.

Any employee that is identified under state law as a "reporting individual" would be required to follow the reporting requirements under state law. If state law requires them to report the discount as a gift, they would also be required to contemporaneously send a copy of that State of Florida Quarterly Gift Report to the Palm Beach County Commission on Ethics.

**FACTS:**

You are an employee of the Village of Tequesta working in the Human Resources Department. A local Gym, Palm Beach Sports Club, has offered all employees of the Village a discounted rate on gym memberships. You stated that this offer is extended to other public and private organizations as well.

Under the facts as stated Palm Beach Sports Club is not a vendor of the Village, nor is it a lobbyist, principal, or employer of lobbyists that lobbies the Village.

The normal membership rate for Palm Beach Sports Club is currently \$35.00 per month, with a one-time enrollment fee of \$29.00. They are offering a discounted rate to all Village employees of \$29.99 per month and to waive the membership fee.

**LEGAL BASIS:**

The legal basis for this opinion is found in §2-442 and §2-444 of the Code:

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

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Lobbyist** shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

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<sup>3</sup> RQO 11-002, RQO 11-007



**Official or employee** means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function, and chief executive officer who is not part of the local governing body.

**Vendor** means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager or employee.

#### **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.
- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity because of:
- (1) An official public action taken or to be taken, or which could be taken;
  - (2) A legal duty performed or to be performed or which could be performed; or
  - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics.
  - (2) *All other officials and employees who are not reporting individuals under state law.*
- b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure

report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.

- (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. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

(1) Exceptions. The provisions of subsection (g) shall not apply to:

- f. Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general 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.

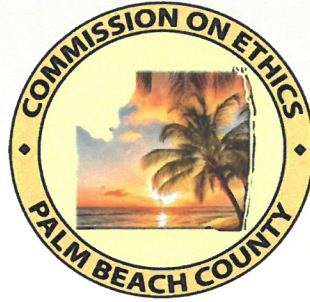
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,  
Executive Director

CEK/gal



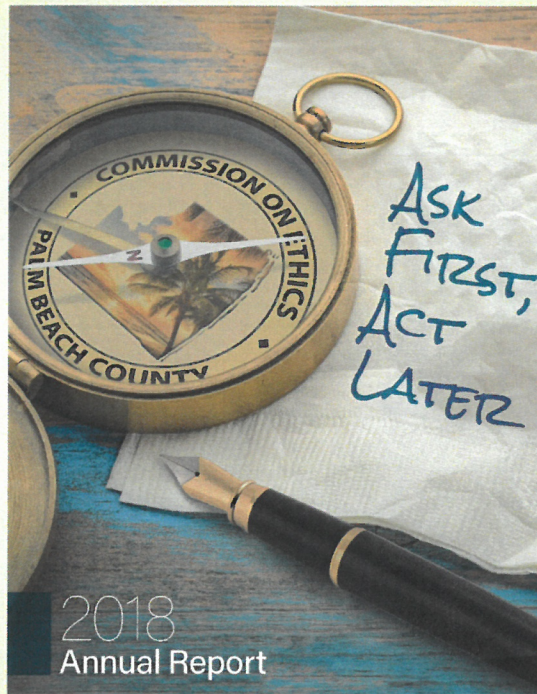
*Honesty - Integrity - Character*

# 2018 Annual Report

Palm Beach County Commission on Ethics

Mark E. Bannon

Executive Director



## Mission Statement

**The mission of the Palm Beach County Commission on Ethics is to foster integrity in public service, to promote the public's trust and confidence in that service, and to prevent conflicts between private interests and public duties.**

We accomplish this mission by conducting ongoing training and education programs, community outreach, providing clear and timely advice, and fairly and impartially interpreting and enforcing the conflict of interest and financial disclosure laws.

In doing so, the Commission is guided by principals of fairness, clarity and common sense.

## History and Jurisdiction

Now in its eighth year of operation, the Commission on Ethics is an independent organization that administers and enforces the Palm Beach County Code of Ethics, Lobbyist Registration Ordinance and Post Employment Ordinance.

Palm Beach County currently has an estimated population of 1.443 million residents and has grown significantly in the past decade in terms of both size and diversity.

The county has over 6,000 full and part time employees , seven elected officials, and approximately 1,000 volunteer officials staffing 95 committees and boards.

The 38 municipalities under our jurisdiction have over 9,000 full and part time employees, 203 elected officials, and 258 municipal committees and boards with more than 1,800 volunteer members.

## Commissioners



Commissioner  
**Michael Kridel**

Appointed by the president of the Palm Beach Chapter of the Florida Institute of CPAs

Must be a member who possesses at least 5 years experience as a CPA with forensic audit experience



Commissioner  
**Peter Cruise**

Appointed by the President of Florida Atlantic University

Must be a faculty member who teaches, in an ethics related curriculum at a college/university with a campus located in Palm Beach County



Commissioner  
**Bryan Kummerlen,  
Vice Chair**

Appointed by the president of the PBC Association of Chiefs of Police

Must be a former law enforcement officer with experience in investigating white collar crimes or public corruption



Commissioner  
**Rodney Romano**

Appointed by the Palm Beach County League of Cities, Inc.

Must be a former elected official for a governmental entity within Palm Beach County



Commissioner  
**Sarah Shullman,  
Chair**

Appointed by the Presidents of the PBC Bar Association, F. Malcolm Cunningham Bar Association, and the Hispanic Bar Association

Must be an attorney with experience in ethics regulation of public officials and employees

## Commission Staff



Mark E. Bannon,  
Executive Director



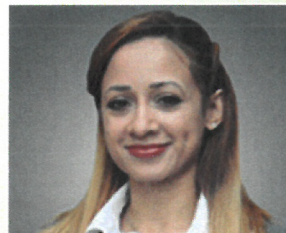
Gina A. Levesque,  
Intake and Compliance Manager



Christie E. Kelley,  
General Counsel



Anthony C. Bennett,  
Chief Investigator



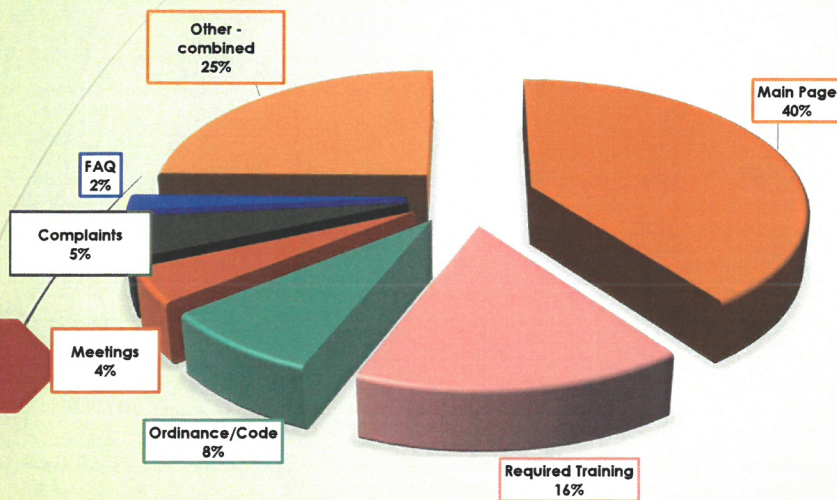
Abigail Irizarry,  
Investigator

## Education & Training

- 15 Live Training Presentations
- 5 Overview Presentations
- 12 Training Policy and Compliance Reviews
- 38 Municipal Meetings
- 6,416 YouTube Views
- 50 DVD's mailed to agencies

## Commission on Ethics website views

VIEWS PER PAGE CONTENT



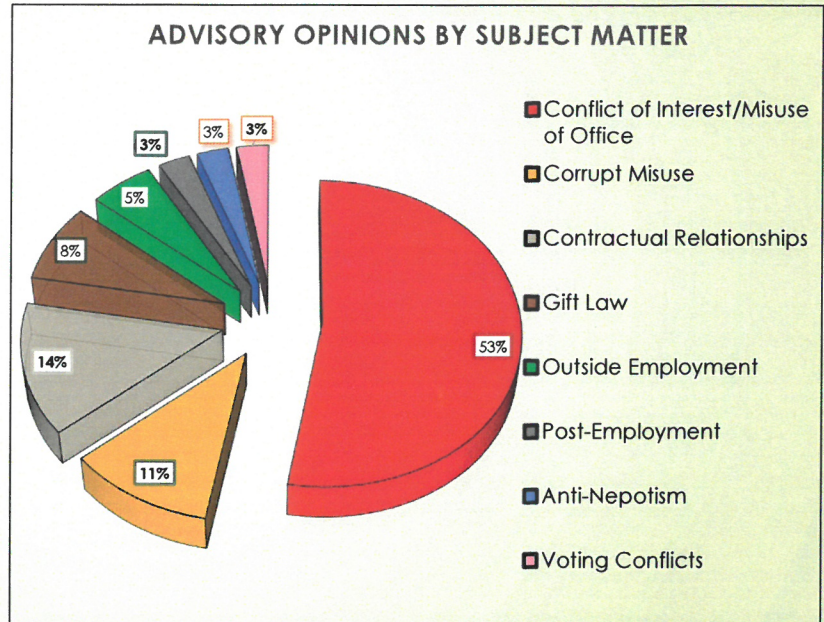
In 2018, approximately **24,000** people viewed the Commission on Ethics' website ([www.palmbeachcountyethics.com](http://www.palmbeachcountyethics.com))

- April showed the greatest number of views of our website with over 1050. February was the lowest with just over 650 views.

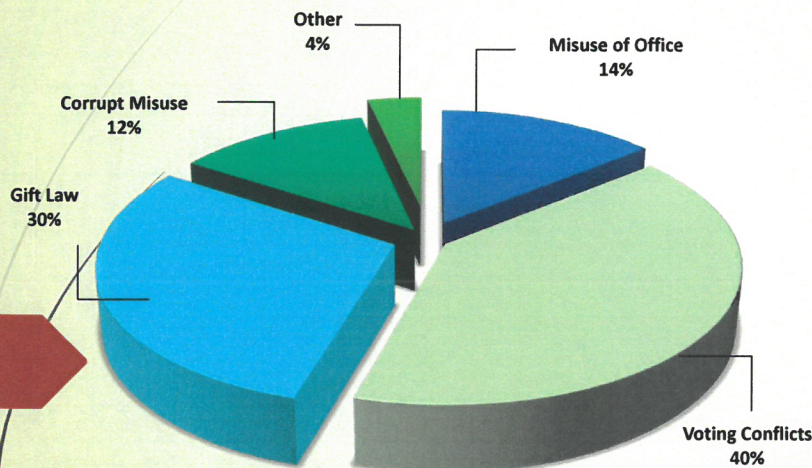
## Advisory Opinions by Subject Matter

In 2018, the Commission on Ethics issued 17 Advisory Opinions.

Voting conflicts, conflicts of interest/misuse of office issues, contractual relationships and Gift Law matters were the most common issues.



## Complaints by Subject Matter

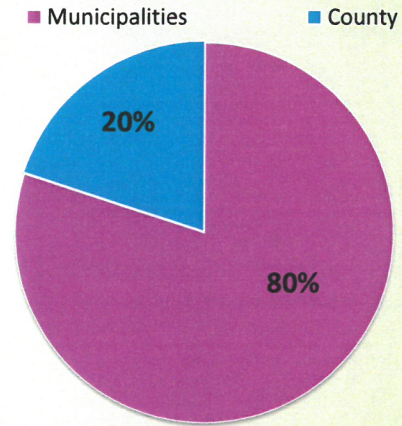


In 2018, there were nine complaints filed, however, 34 complaints initially filed in 2017 were also investigated during this period.

- One case was taken to a final hearing before a Hearing Officer. This was the first time this option had been used, and only the second public hearing for the Commission on Ethics.

## Complaints by Public Entity

Of the complaints investigated in 2018, 80% were filed against a municipal official or employee, and 20% against a county official or employee.



## Complaints - Resolutions

2018

- 9 Filed – 1 Self initiated and 8 from other individuals.
  - 2 Administrative Dismissals
  - 7 Pending

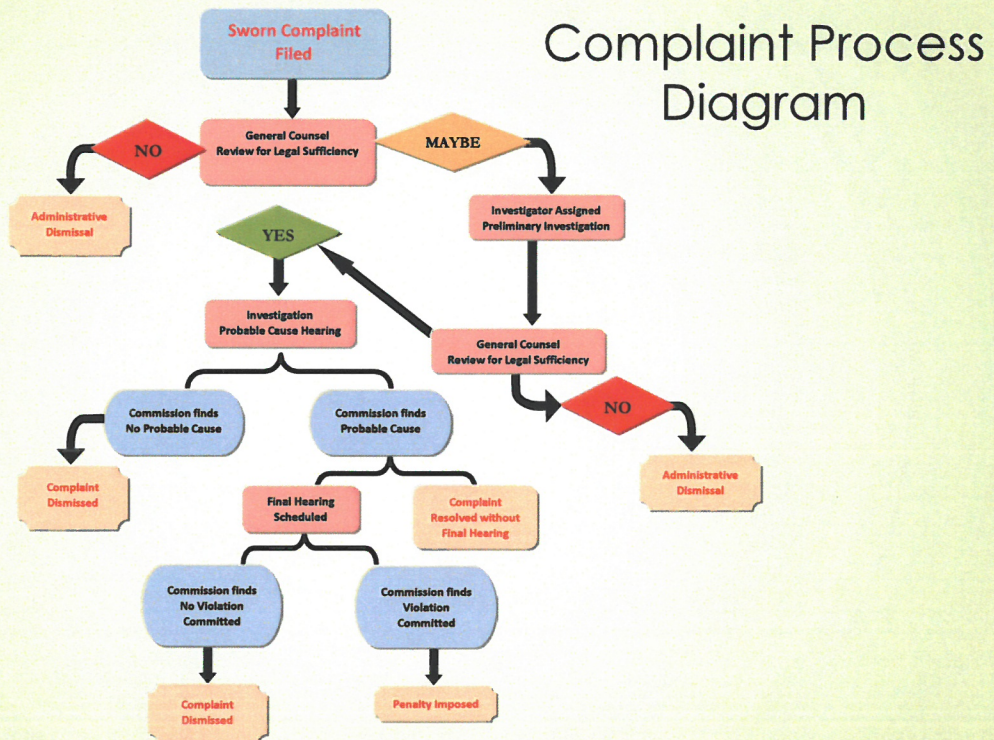
2017

- 34 pending from 2017 and resolved in 2018
  - 1 Final Hearing before a Hearing Officer
  - 1 Negotiated Settlement – Letter of Reprimand and a \$500 fine
  - 10 Dismissals – Letter of Instruction
  - 20 No Probable Cause; and
  - 2 Administrative Dismissals



# Inquiries - Resolutions

- 5 Opened
  - 1 resulted in the Self Initiated Complaint
  - 2 Not Legally Sufficient – Closed
  - 2 Pending



## Legislative Activities and Initiatives

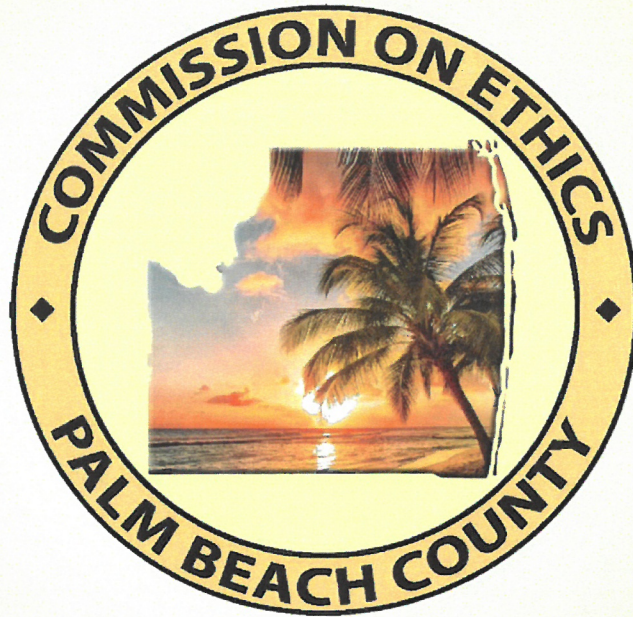
### **Code of Ethics and Commission on Ethics Ordinances**

- ❖ 2011 – Significant revisions
- ❖ 2015 – Revised again to add a Hearing Officer
- ❖ 2018 – Process began to make additional changes
- ❖ 2019 – Plan to present suggested changes to Commission
- ❖ 2019 – Plan to have Commission ask BOCC to form Drafting Committee to change Ordinances

## Fiscal Report

- Operating budget for fiscal year 2018 (October 2017 to November 2018) was \$654,193.
- Expended \$644,318.66
- Returning \$9,874.34 to the County general Fund.

Detailed budget information is available from the Palm Beach County Office of Financial Management and Budget at [www.pbcgov.org/ofmb](http://www.pbcgov.org/ofmb)



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