



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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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

Amended Agenda

February 7, 2019 – 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 January 10, 2019
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 19-004
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Proposed Advisory Opinions
 - a. RQO 19-003
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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

JANUARY 10, 2019

**THURSDAY
1:34 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 - Absent
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:

Yadzia Road, Deputy Clerk, Clerk & Comptroller's Office (Clerking)
Gretel Sarmiento, Deputy Clerk, Clerk & Comptroller's Office (Condensing)

III. INTRODUCTORY REMARKS – None

IV. APPROVAL OF MINUTES FROM NOVEMBER 1, 2018

MOTION to approve the November 1, 2018 minutes. Motion by Peter Cruise, seconded by Rodney Romano, and carried 3-0. Bryan Kummerlen and Michael Kridel absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- a. RQO 18-017
- b. RQO 19-001
- c. RQO 19-002

MOTION to approve the consent agenda. Motion by Peter Cruise, seconded by Rodney Romano, and carried 3-0. Bryan Kummerlen and Michael Kridel absent.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. PRESENTATION OF 2018 ANNUAL REPORT

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

- The COE's mission involved fostering integrity in public service, promoting the public's trust and preventing conflicts between private interests and public duties.
- Education programs, community outreach programs, and advisory opinions helped accomplish that.
- Fairness, clarity and common sense were the principles that guided the COE, which was on its 8th year of operation.
- The COE had 18,000 people under its jurisdictions, including elected officials and employees.
- Costs had been kept to a minimum considering the services the COE offered.
- This year saw a total of 15 live training presentations, 12 training policy and compliance reviews, and 39 municipal meetings.
- Training was also done via YouTube and 50 DVDs had been mailed to various agencies.
- COE Web site views totaled 24,000, with April seeing the highest volume and February the lowest.

VII. – CONTINUED

- In 2018, 17 advisory opinions were issued, with conflict of interest, contractual relationships and gift law being the most common issues.
- In 2018, 9 complaints were investigated along with 34 ongoing complaints carried over from 2017. Voting conflict was the most common subject matter.
- Of the complaints investigated, 80% was filed against a municipal official or employee while 20% was against a county official or employee.
- City residents tended to pay more close attention to their local government, which could explain the high percentage of municipal complaints.
- Among the 34 complains from 2017 that were resolved in 2018 figured 10 dismissals with letters of instruction, 20 no probably causes and 1 negotiated settlement that included a \$500 fine.
- The complaint process diagram summarized the various stages of findings preceding public sanction or dismissal.
- The operating budget for Fiscal Year 2018 was \$654,193, of which \$9,874 was returned to the County general fund.

Commissioner Cruise inquired about the average turn-around time for an advisory opinion.

Mr. Bannon said that it depended on the complexity of the matter and that some opinions were fairly simple and could be formulated in about 3 weeks.

Commissioner Shullman asked for clarification on the COE jurisdiction with respect to independent entities, such as the Palm Beach County School Board (School Board).

VII. – CONTINUED

Mr. Bannon said that the COE had no jurisdiction over the School Board and that a recent newspaper article referred to the School Board's code of ethics. He said that his opinion was that it was unlikely that –just like a city's ethics code would not apply to the elected officials, but would probably be more of a policy applied to employees– the same was probably true of the School Board. He clarified that the published story implied that he believed that the COE's code of ethics did not apply to elected officials, which was inaccurate. He added that the COE did have the authority to investigate municipal and county elected officials and issue sanctions, if necessary.

Commissioner Cruise inquired as to why the City of Westlake did not fall under the COE's jurisdiction.

Mr. Bannon said that the Inspector General (IG) Ordinance, which was written at the same time as the COE Ordinance, stated that any new municipalities that came along after the ordinance adoption, should fall under the IG's jurisdiction.

Commissioner Cruise said that placing new municipalities under the COE's jurisdiction should be one of the changes recommended to the BCC.

Mr. Bannon said that he would review the IG ordinance language and consider proposing that change.

IX. COMMISSION COMMENTS

IX.A.

DISCUSSED: Staff commendation

Commissioner Romano said that given the volume of documents he reviewed every day, it was very helpful to receive information in an effective and concise manner. He added that the COE staff did a great job.

Commissioner Shullman said that 2018 proved to be a productive year and the message of fairness and firmness was conveyed. She added that the advisory opinions issued reflected that the main goal was compliance and not necessarily punishment.

X. PUBLIC COMMENTS – None

VIII. EXECUTIVE DIRECTOR COMMENTS – None

VIII.A.

DISCUSSED: Conference attendance

Mr. Bannon stated that COE Investigator I Abigail Irizarry had spent 3 days in Philadelphia attending a global conference and a lot of value had resulted from her participation.

VIII.B.

DISCUSSED: High School Ethics Ball

Mr. Bannon stated that on January 26, he would be volunteering at the High School Ethics Ball along with COE General Counsel Christie E. Kelley, Esq., and COE Intake and Compliance Manager Gina A. Levesque. The event would take place at Santaluces Community High School this year.

XI. ADJOURNMENT

At 2:01 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

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February 7, 2019

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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

February 1, 2019

Mr. Kevin Walstrom
PBC Department of Environmental Resources Management
2300 North Jog Road
West Palm Beach, FL 33411

Re: RQO 19-004
Outside employment/Contractual Relationships/Misuse of public office of employment

Dear Mr. Walstrom,

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, a county employee, works part-time selling tools for a franchise owner representing a large national tool manufacturing company, where neither the franchise owner nor the tool company are vendors of the county, and where all sales are made directly to individual automobile service professionals at their place of work, which includes sales to other county employees on county property at their assigned worksites?

ANSWER:

Based on the facts submitted, it would not violate the Code so long as the sales are conducted on your personal time, and you do not use or attempt to use your position as a county employee to influence or assist in these sales, or in gaining access to the county work sites to make such sales.

The Code prohibits an official or employee from entering into any contract or other transaction for goods and services with their respective county or municipality.¹ This generally includes any contract or other transaction for goods and services with your government employer and your outside employer. Further, the Code prohibits public officials or employees from using their official position or office in any manner that they know or should know with the exercise of reasonable care will result in a special financial benefit to themselves, their outside employer, or any other person or entity identified in the Code.² As such, you must take care not to use your position as a county employee to gain access to customers or to assist in sales to these customers beyond that to which any similarly situated merchant is entitled.

Under the facts that you have presented, neither the tool company nor the franchise owner are vendors of the county, and you would be selling tools directly to automotive service professionals, who then individually own the tools. While these particular county employees may receive a stipend from the county to purchase tools used in their work as part of their employment benefits, this stipend is paid directly to the employee, and the county is not involved in the decision as to what tools or from whom the employee must purchase the tools.

¹ §2-443(d), *Contractual relationships*.

² §2-443(a)(1)&(4), *Misuse of public office or employment*

The county only requires that the employees have the tools necessary to complete their assigned work. Therefore, while there is clearly not a contractual relationship between the tool company or franchise owner and the county under this arrangement, we feel that payment of a stipend by the county to an employee to purchase tools under these facts might appear to create an indirect contractual relationship between the county and the franchise owner or tool company. However, because the county is not directly providing any goods or services under such an arrangement, there is no privity of contract, and because there is no contract between you and any person, agency or entity acting for the county, a prohibited contractual relationship would not exist under these facts.

FACTS:

You are a county employee who works in the Environmental Resources Management Department. You have a friend who has offered you part-time employment selling automotive tools. Your friend is a franchise owner for Mac Tools, and as such is given a specific geographical area or list of potential customers. Under his agreement, he is the lone franchisee who can sell Mac brand tools at certain locations. You have stated that neither Mac Tools or your friend are vendors of the county and do not sell tools directly to any county department. However, at least one of the spots within your friend's territory includes Palm Beach County Fleet Management (Fleet Management), where county vehicles are serviced and repaired. Mac Tools is a mobile tools provider, thus they sell their tools to individual automotive service professionals by coming onto the worksites of each potential customer, including Fleet Management. However, all sales are made to and paid for by the individual automotive service professional, and while most of the tools bought are used at work, they remain the property of the individual purchaser. You also advise that the county does pay a stipend to its automotive service professionals to pay for tools, but that the decision regarding what tools to purchase and from whom is the employee's decision to make, so long as they have the necessary tools to complete their assigned work.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442, §2-443(a)(1)&(4), and §2-443(d), of the Code:

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;
- (4) An outside employer or business of his or hers;

- (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 assumes 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

February 7, 2019

Ms. Barbara Cheives
Converge & Associates Consulting
1977 Brandywine Rd. #203
West Palm Beach, FL 33409

Re: RQO 19-003
Advisory Board Waiver

Dear Ms. Cheives,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on February 7, 2018.

QUESTION:

Would a conflict of interest exist for you as a member of the Palm Beach County Criminal Justice Commission (CJC) if you were hired as a trainer by the Racial Equity Institute (REI), a vendor of Palm Beach County, to provide training as a part of a CJC project?

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits you from using your official position in any way to give a special financial benefit to you or your outside employer or business.¹ Further, the Code prohibits you from participating in or voting on any matter that will result in a special financial benefit being given to you or your outside employer or business.² Here, you would be prohibited from using your official position as a member of the CJC in any way to give a special financial benefit to yourself or to REI or from participating in or voting on a matter that would give a special financial benefit to you or REI.

Additionally, the Code prohibits an advisory board member from entering into any contract or transaction for goods or services with the county.³ This prohibition extends to all contracts or transactions between the county, and the official, directly or indirectly, or the official's outside employer or business. Here, if you accept the trainer position with REI, the Code prohibits you from remaining as a board member of the CJC unless an exception or waiver applies.

This contractual relationship prohibition may be waived by the Palm Beach County Board of County Commissioners (BCC) if the CJC is purely advisory.⁴ A purely advisory board is authorized to only make recommendations to another board or a government administrator. A board with any measure of final decision-making authority is not purely advisory. Based on the facts submitted, the CJC is purely advisory. The CJC is not authorized to make final decisions on matters without approval of the BCC or another government administrator. Here, the final decision-maker is one of the community stakeholders, such as the 15th Judicial Circuit Chief Judge, the Palm Beach County Sheriff, or the county's State Attorney. Therefore, a waiver would apply to this situation. A waiver will require the Palm Beach County Board of County Commissioners (BCC), upon full disclosure of the contract at a public meeting to waive the conflict of interest. If you were appointed by the entire BCC, or confirmation of your appointment was made by the entire board, an affirmative vote of a majority plus one of the total board membership is required. If you were appointed by only one member of the BCC, the

¹ §2-443(a)

² §2-443(c)

³ §2-443(d)

⁴ §2-443(e)

appointing board member alone can waive this conflict of interest. Thus, as long as the conflict of interest in having a contractual relationship with REI is waived, the Code does not prohibit you from working as a trainer for REI while serving as a CJC member.

FACTS:

You are a member of the CJC, which has 32 members. You are one of the ten private sector business leaders nominated by the Economic Council of Palm Beach County and appointed by the BCC to serve three-year terms. According to the Criminal Justice Commission Ordinance, the BCC gave the CJC a broad scope of authority to coordinate all aspects of the criminal justice systems in the county on the federal, state, and local level. Among its authority is the ability to establish task forces or subcommittees to study in detail key aspects of programs and systems within the scope of the CJC as well as the authority to review, research, and evaluate those existing systems and programs. The CJC is also able to implement and oversee programs within the scope of the CJC.

In your private capacity, you own a business, Converge Associates and Consulting, which provides cultural competency training. In addition, you have also become a qualified trainer for the Racial Equity Institute which provides training and consulting around the United States to create racially equitable organizations and systems.

At the CJC's meeting on May 22, 2017, members discussed the MacArthur Foundation Safety and Justice Challenge Grant application that included funds for implicit bias training and gave CJC staff direction to submit the application. You were not in attendance at that meeting. On June 1, 2017, CJC staff submitted a grant application to the MacArthur Foundation that included funds for implicit bias training. No vendor was identified at that time, and you were not yet certified as a trainer for REI. On October 2, 2017, the CJC was awarded two million dollars by the MacArthur Foundation to be an implementation site in their Safety and Justice Challenge.

Palm Beach County through the CJC is entering into a contract with REI using the MacArthur Foundation grant funds to provide implicit bias training to all of the criminal justice employees in Palm Beach County who have public contact or make serious decisions affecting people's lives. The training provided by REI is a process of awareness about systemic racism that is taught through interactive learning and exercises that help participants understand the importance of their decisions. CJC members did not vote on the vendors or the final contracts with the vendors. That authority was delegated to the CJC Executive Director who follows the county's purchasing code. The CJC does have the authority to make policy-setting recommendations regarding this contract and to provide oversight of this contract, if needed, even though it is not currently doing so.

REI's cost to Palm Beach County for four three-hour sessions over a two-day period is \$11,000 plus travel costs for their trainers. There will likely be about seven two-day training sessions in 2019. Palm Beach County will pay REI directly who will then pay their trainers per their internal practices. You have been selected by REI to provide the training sessions for compensation as part of a CJC project. There will likely be 20 or more training sessions in 2019, which some of which members of the CJC will likely attend.

The CJC Executive Director after consulting the County Attorney's Office has confirmed that the CJC is purely advisory and does not have the authority to make final decisions. When the CJC researches areas in the criminal justice system locally and brings together stakeholders to discuss problems and make recommendations, those recommendations go through the CJC's committees, to the CJC board, and then to the final authority over the area, such as the Chief Judge, the Sheriff, or the State Attorney. The CJC does not have any final decision-making authority over these areas.

LEGAL BASIS:

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

Sec. 2-443. Prohibited Conduct.

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

- (1) Himself or herself;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(l) 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 88, 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)(l) through (7).
- (d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.
- (e) **Exceptions and waiver.** The requirements of subsection (d) above may be waived as it pertains to advisory board members where the advisory board member's board is purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. No waiver shall be allowed where the advisory board member's board is not purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. Waiver may be effected by the board of county commissioners or by the local municipal governing body as applicable upon full disclosure of the contract or transaction prior to the waiver and an affirmative vote of a majority plus one (1) of the total membership of the board of county commissioners or the local municipal governing body as applicable. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after full disclosure of the contract or transaction at a public hearing, by the appointing person.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assume they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

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

Sincerely,

Mark E. Bannon,
Executive Director

CEK/gal