

Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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West Palm Beach, FL 33401

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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

April 4, 2019 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session will begin at 1:45pm
Regular Agenda will resume at 2:15pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from February 7, 2019
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 19-005
- VI. Items Pulled from Consent Agenda
 - a.
- VII. Executive Session – C18-001
- VIII. Executive Director Pay
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. Adjournment

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

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

FEBRUARY 7, 2019

**THURSDAY
1:29 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
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:

Timothy Montiglio, Deputy Clerk, Clerk & Comptroller's Office (clerking)
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office (condensing)

III. INTRODUCTORY REMARKS – None

IV. APPROVAL OF MINUTES FROM JANUARY 10, 2019

**MOTION to approve the January 10, 2019 minutes. Motion by Peter Cruise,
seconded by Bryan Kummerlen, and carried 5-0.**

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. Request for Opinion (RQO 19-004)

MOTION to approve the consent agenda. Motion by Rodney Romano, seconded by Michael Kridel, and carried 5-0.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. PROPOSED ADVISORY OPINIONS

VII.a. RQO 19-003

Christie Kelley, COE General Counsel, said that:

- The advisory opinion letter was amended based on new facts.
 - The Criminal Justice Commission (CJC) executive director and the liaison for the County Attorney's Office determined that the CJC was an advisory board and did not have the authority to make final decisions.
- Barbara Cheives, a CJC member, asked whether a conflict of interest existed if the Racial Equity Institute (REI), a County vendor, hired her as a subcontractor to provide training for an upcoming CJC project.
- Staff submitted that the County's Code of Ethics ordinance prohibited an advisory board member from entering into any contract or transaction for goods or services with the County.
 - The prohibition extended to contracts between the County, an official or employee, directly or indirectly, or an official or employee's outside employer or business.
 - If the CJC member provided subcontracted services to the County through a contract between the County and REI, an indirect contract would exist, which prohibited her from serving as a CJC member.
 - Based on the new facts, the CJC member was eligible for a waiver and if approved, she would not be prohibited from working for the vendor while serving on the CJC.

VII.a. – CONTINUED

MOTION to approve advisory opinion letter RQO 19-003. Motion by Michael Kridel, seconded by Peter Cruise, and carried 5-0.

VIII. EXECUTIVE DIRECTOR COMMENTS

VIII.A.

DISCUSSED: High School Annual Ethics Bowl.

Mark Bannon, COE Executive Director, said that Atlantic High School won the annual Ethics Bowl that was held at Santaluces High School.

IX. COMMISSION COMMENTS

IX.A.

DISCUSSED: COE Records.

Commissioner Peter Cruise asked whether any of the COE's permanent records were exempt from the Sunshine Law.

Mr. Bannon responded that:

- The COE's records were exempt from the Sunshine Law's disclosure rules until the complaint process reached a certain stage.
- Once a probable cause determination was reached, all records became public.
- The COE followed the State COE's policy that no action would be taken on complaints that were received within 30 days of an election until the election was over.
- A short presentation on records retention could be given at the next COE meeting.

Gina Levesque, COE Intake and Compliance Manager, said that staff followed the Sunshine Law's specific schedule for records retention. She added that digital records could be retained indefinitely.

COMMISSION COMMENTS – CONTINUED

IX.B.

DISCUSSED: Curriculum Vitae (CV) Information.

Commissioner Rodney Romano asked whether it was appropriate to include on his CV that he was a COE member.

Mr. Bannon said that it probably would not be an issue because the CV should reflect someone's experience.

Ms. Kelly said that she would research whether an advisory opinion letter was previously issued on the matter.

IX.C.

DISCUSSED: COE Executive Director Compensation.

Chair Sarah Shullman suggested that the COE consider giving Mr. Bannon a raise because he had not received one since becoming the executive director.

Ms. Levesque said that the matter should be included as an agenda item for discussion at the next meeting.

MOTION to approve including COE executive director compensation as an agenda item at the next COE meeting and directing staff to review and bring back salary-related information. Motion by Rodney Romano, seconded by Peter Cruise, and carried 5-0.

Ms. Levesque clarified that the Board of County Commissioners' approval for the salary increase was not needed.

Mr. Bannon added that any salary increase would need to be within the County's budget.

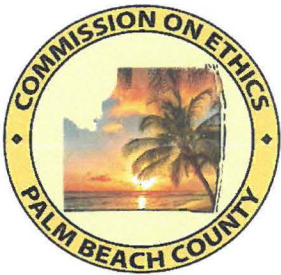
X. PUBLIC COMMENTS – None

IX. ADJOURNMENT

At 1:45 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Palm Beach County Commission on Ethics

April 4, 2019
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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

March 14, 2019

Mr. Jamael Stewart, Assistant Director
City of Delray Beach, Neighborhood and Community Services
100 NW 1st Avenue
Delray Beach, FL 33444

Re: RQO 19-005
Conflict of Interest/Charitable Solicitation

Dear Mr. Stewart,

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 as a City of Delray Beach (City) employee solicit or accept donations from businesses on behalf of Opportunity Knocks, a 501(c)(3) non-profit organization of which you are an officer or director?

ANSWER:

The Code prohibits you from using your official position in any way to give a special financial benefit, not shared with similarly situated members of the general public, to a non-profit organization of which you are an officer or director.¹ The Code also prohibits you from using your official position to corruptly secure to special benefit for others.²

Based on the facts submitted, you are prohibited from using your official position as the City's Assistant Director of Neighborhood and Community Services to give a special financial benefit to Opportunity Knocks, the non-profit organization of which you are an officer or director, or to corruptly secure a special benefit of any kind for Opportunity Knocks. Here, lending your name and official title to a fundraising effort would per se constitute using your City employment to give a special financial benefit to Opportunity Knocks.³ Thus, any solicitation of behalf of Opportunity Knocks would need to be in your name without reference to your title or position with the City. This prohibition applies to you directly as well as to anyone soliciting on your behalf.

To the extent that the gift law is concerned, the Code prohibits you, or any other person or entity on your behalf, from soliciting or accepting any gift with a value greater than \$100 in the aggregate per calendar year, from a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, sells, or leases to the City.⁴ However, an exception to this prohibition exists for charitable solicitations. Under Section 2-444(h), the Code allows public employees to solicit or accept donations over \$100 on behalf of a non-profit organization from anyone, including a vendor, lobbyist, or any principal or employer of a lobbyist, as long as the person or entity solicited does not have a pending application or award of any nature before the public employer.⁵

¹ §2-443(a)

² §2-443(b)

³ RQO 11-029; RQO 13-002

⁴ §2-444(a)(1)

⁵ §2-444(h)(1)

Based on the facts provided, you are not prohibited from soliciting or accepting donations from businesses on behalf of Opportunity Knocks while maintaining your position with the non-profit organization, provided that you do so in your private capacity. However, if you solicit donations in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the City of Delray Beach, then you, or Opportunity Knocks if solicitations are made in your name, must maintain a record of any solicitations from these City vendors, lobbyists, principals or employers of lobbyists, and submit a solicitation log to the COE within 30 days of the solicitation, or within 30 days of a fundraising event held.⁶ The solicitation log can be found on the COE's website. In addition, you may not use City staff or resources in the solicitation of the charitable contributions.⁷ You must also take great care that solicitations accepted on behalf of Opportunity Knocks do not result in any quid pro quo or other special consideration to the person or entity solicited.⁸

FACTS:

You are a City employee, serving as the Assistant Director of Neighborhood and Community Services. You started a 501(c)(3) non-profit organization called Opportunity Knocks. You and two other persons serve as officers of the organization, but you are the only one who works for the City.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a), §2-443(b), §2-444(a)(1), and §2-444(h) 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:
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (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.

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.
- (h) Solicitation of contributions on behalf of a non-profit charitable organization.
- (1) Notwithstanding the prohibition on gifts as outlined in subsections (a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity

⁶ §2-444(h)(2)

⁷ §2-444(h)(3)

⁸ §2-444(h)(1)

being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.

- (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the commission on ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the commission on ethics. The form shall be filed within thirty (30) days from the occurrence of the event for which the solicitation was made, or if no event, within thirty (30) days from the occurrence of the solicitation.
- (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions described in this subsection.

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

Agenda Item VIII - Executive Director Pay

<u>Title</u>	<u>Salary</u>
Inspector General, Palm Beach County	\$196,965
Inspector General, Broward County	\$173,349
Inspector General, Miami Dade Co.	\$254,715
Ex. Director, PBC COE	\$152,588
Ex. Dir. Ethics Commission, Miami Dade Co.	\$197,143
Ex. Dir. Jacksonville Ethics Commission (Part-Time Executive Director)	\$115,500
Ex. Dir. Florida Ethics Commission	\$124,336
U.S. Government Ethics Deputy Directors (Average based on 20 reported positions)	\$172,407