

Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

300 North Dixie Highway
West Palm Beach, FL 33401

561.355.1915

FAX: 561.355.1904

Hotline: 877.766.5920

E-mail: ethics@pbcgov.org

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

June 6, 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 May 2, 2019
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 19-008
 - b. RQO 19-010
 - c. RQO 19-011
- 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**

MAY 2, 2019

**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
Michael S. Kridel
Rodney G. Romano – Arrived later

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 APRIL 4, 2019

MOTION to approve the April 4, 2019 minutes. Motion by Peter Cruise, seconded by Michael Kridel, and carried 4-0. Rodney Romano absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. Request for Opinion (RQO) 19-006

V.b. RQO 19-007

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

VI. ITEMS PULLED FROM CONSENT AGENDA – None

RECESS

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

RECONVENE

At 2:03 p.m., the COE reconvened, and at Chair Sarah Shullman's request for a roll call, Vice Chair Kummerlen, and Commissioners Cruise, Kridel, and Romano were present.

VII. EXECUTIVE SESSION – C18-004

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

Complainant, Richard Giorgio, filed the above referenced complaint on November 20, 2018, alleging that Respondent, Keith James, who was a City Commissioner at the time of the allegations, violated §2-443(a), §2-443(b), and §2-443(c) of the Palm Beach County Code of Ethics by voting favorably on matters involving the Wantman Group, Inc. (WGI) in exchange for a reduction of rent by Respondent's landlord, who is a lobbyist for WGI.

(This space intentionally left blank.)

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On May 2, 2019, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and Respondent, the Commission concluded that probable cause does not exist to believe any violations of §2-443(a), §2-443(b), or §2-443(c) occurred because the evidence showed that Respondent's broker found the property for him, Respondent did not know who the property owner was prior to entering into the lease agreement, and Respondent did not receive any special benefit, financial or otherwise, because his monthly rent payment is above fair market value for similar properties.

Therefore, it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Keith James, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on May 2, 2019.

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: Ethics Awareness Month.

Mark Bannon, COE Executive Director, said that Commissioner Weinroth would be presenting a proclamation at the May 5, 2019 BCC meeting declaring May 2019 as Ethics Awareness Month.

IX. COMMISSION COMMENTS – None

X. PUBLIC COMMENTS – None

X.a.

DISCUSSED: Commendation.

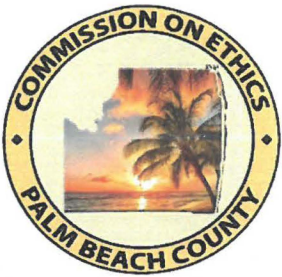
Richard Radcliffe, League of Cities Executive Director, commended the COE and staff for instilling public trust and deciding not to discuss certain aspects of an investigation during a “political season” or election because complaints made against individuals during an election could negatively affect them.

XI. ADJOURNMENT

At 2:09 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Palm Beach County Commission on Ethics

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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

May 17, 2019

Ms. Paula Newman-Rocker
236 NW 8th Avenue
Delray Beach, FL 33444

Re: RQO 19-008
Conflict of Interest

Dear Ms. Newman-Rocker,

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 1:

Would a conflict of interest arise for you as a member of the Delray Beach Historic Preservation Board (HPB) if you discuss and vote on an application before the HPB which seeks to list the Carver High School buildings on the City of Delray Beach's Register of Historic Places when you are the director of the Carver High School Historical Preservation Society, Inc. (Carver Preservation Society), a non-profit organization which supports having Carver High School listed on both the local and national Register of Historic Places?

ANSWER 1:

As an advisory board member, you are prohibited from using your official position in any manner, including voting or discussion, to give a special financial benefit to specified persons or entities, which includes a non-profit organization of which you are an officer or director.¹ Financial benefit, in the context of the Code, constitutes economic gain or loss.² Because you are the director of the Carver Preservation Society, you are prohibited from using your position as a member of the HPB in any way, including voting on or discussing a matter, to give the Carver Preservation Society a special financial benefit.

In determining whether an action would result in a special financial benefit being given to a person or entity, the COE has held that any such financial benefit must be direct and immediate, rather than remote and speculative.³ Similarly, the Florida Commission on Ethics has also determined that where there is uncertainty at the time of a vote as to whether a measure directly affects a person or entity, any private gain or loss based on the vote is remote and speculative, and thus the official will not be precluded from casting such vote.⁴

Here, based on the facts provided, it is remote and speculative as to whether your vote on an application seeking to list Carver High School on the city's Register of Historic Places would result in a special financial benefit being given to the Carver Preservation Society. There is uncertainty as to whether the vote on this application would have any direct effect on financial support that the Carver Preservation Society could receive after this vote. Because there is not direct causal relationship between this vote and a special financial benefit being given to the Carver Preservation Society, any discussion or vote by you on an application seeking to list Carver High School buildings on the city's Register of Historic Place would not be a violation of either §2-443(a)(1-7), *Misuse of public office or employment*, or §2-443(c), *Disclosure of voting conflicts*.

¹ §2-443(a), §2-443(c)

² RQO 10-013

³ RQO 12-063

⁴ CEO 85-77CEO 05-15; CEO 91-61; CEO 12-19

The Code also prohibits you from taking any action, which would "corruptly" secure a special privilege, benefit or exemption for yourself or others.⁵ The Code defines corruptly as "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."⁶

In RQO 17-015, the Commission held that the "fact that an official holds a well-known position on a controversial issue, and takes that position in discussions or votes concerning that issue, does not make those actions a 'corrupt misuse' of their official position. . . so long as they receive no prohibited special benefit by these actions." Applying this holding to the facts submitted, because of your strongly held opinions concerning whether Carver High School should be listed on the city's Register of Historic Places and your position as the director of the Carver Preservation Society, to avoid violating the Code, you must take great care to treat the application regarding Carver High School the same as any other application for placement on the Register of Historic Places and ensure the same criteria is met before casting your vote.

QUESTION 2:

Does the Code prohibit you from discussing and voting on an application before the HPB that is supported by or opposed by the Delray Beach Preservation Trust (Trust), a 501(c)(3) non-profit organization, if the Trust provides financial support to the Carver Preservation Society or becomes a fiscal sponsor of the Carver Preservation Society?

ANSWER 2:

As an advisory board member, you are prohibited from using your official position in any manner, including voting or discussion, to give a special financial benefit to specified persons or entities.⁷ Here, the Trust is not one of the prohibited persons or entities listed. Because you are not an officer or director of the Trust, the Code does not prohibit you from voting on a matter that would give a special financial benefit to the Trust.

The Code also prohibits you from using your official position on HPB to corruptly secure a special privilege, benefit, or exemption for yourself or others.⁸ Under the Code, corruptly means taking an action with a wrongful intent and which is inconsistent with the proper performance of your public duties.⁹ Even where there is no financial gain or loss from your action, because you would be voting on an application that is supported or opposed by the Trust, who also provides financial support to the Carver Preservation Society, you must ensure that any action you take is not done with a wrongful intent in order to "secure a special privilege, benefit, or exemption" for yourself or others.

Based on the facts provided, as long as you do not use your official position as a member of the HPB in any way, including participating in or voting on a matter, to give a special financial benefit to any of the prohibited persons or entities listed in §2-443(a), and further provided there is no "quid pro quo" or other benefit offered or accepted in exchange for the financial support from the Trust, the Code would not prohibit you from voting on an application before the HPB that the Trust supports or opposes.

It should also be noted that if you solicit funds on behalf of the Carver Preservation Society you must do so in your private capacity and not use your title as a member of the HPB in any way in the fundraising efforts.

FACTS:

You serve on the Delray Beach Historic Preservation Board. The HPB helps to retain and protect the character of the City's architectural past by recommending sites and historic districts to be listed in the city's Local Register of Historic Places. HPB also reviews building permits for alterations, additions, new construction, renovations and demolition requests that affect the exterior of designated historic sites and properties. The board is made up of seven members, who are appointed by the City Commission for a term of three years. The HPB members must have knowledge, experience, and a personal or professional interest in historic restoration and preservation.

⁵ §2-443(b)

⁶ Id.

⁷ §2-443(a); §2-443(c)

⁸ §2-443(b)

⁹ Id.

You were appointed in August 2018. For at least a year before your appointment, you had been organizing support to save and restore two buildings in Southwest Delray Beach that housed the former Carver High School. Both of these buildings are listed on the state's historic site file, and the state has deemed them eligible for inclusion on the National Register of Historic Places. An application by a member of the public has been submitted to include Carver High School on the city's Local Register of Historic Places.

In your private capacity, you are also the Director of the Carver High School Historical Preservation Society, a not-for-profit organization. You do not receive any compensation for serving as the director. The goal of this organization to preserve and adapt Building 1, Building 12, and the gymnasium of the high school to become technical, cultural and vocational skills centers. As Director, you recently reached out to the Delray Beach Preservation Trust, a 501(c)(3) organization which advocates for preservation of historic buildings, districts, and settings in the City. The Trust's board of directors has tentatively approved paying \$500 to help brand the Save Carver mission and solicit support on social media platforms like WordPress (blog), Facebook, and Change.org. It also discussed setting up a subcommittee of the Trust devoted to fundraising for the Save Carver mission. You are not an officer or director of the Trust. While these financial actions would benefit your cause, they would not benefit you financially.

LEGAL BASIS:

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

Sec. 2-443. Prohibited conduct.

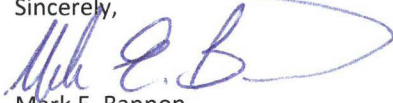
- (a) ***Misuse of public office or employment.*** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (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.
- (c) ***Disclosure of voting conflicts.*** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed

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

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

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

Mark E. Bannon
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

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Commissioners
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Rodney G. Romano
Michael S. Kridel
Peter L. Cruise
Executive Director
Mark E. Bannon

May 24, 2019

Mr. Stefan Harzen
Town of Jupiter Environmental Task Force
210 Military Trail
Jupiter, FL 33458

Re: RQO 19-010
Conflict of Interest/Charitable Solicitation

Dear Mr. Harzen,

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 an advisory board member for the Town of Jupiter (Town) solicit or accept donations, on behalf of the Taras Oceanographic Foundation, a 501(c)(3) non-profit organization of which you are an officer or director, from businesses that are vendors of the Town?

ANSWER:

The Code prohibits officials from using their official position or office 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 they are an officer or director.¹ The Code also prohibits officials from using their official position or office to corruptly secure to special benefit for others.² Therefore, as an advisory board member, you are prohibited from using your official position as a member of the Town's Environmental Task Force to give a special financial benefit to Taras Oceanographic Foundation or to corruptly secure a special benefit of any kind for Taras Oceanographic Foundation. Further, lending your name and official title as an Environmental Task Force member to a fundraising effort on behalf of Taras Oceanographic Foundation would per se constitute using your appointed position to give a special financial benefit to Taras Oceanographic Foundation.³ Thus, any solicitation, including letters sent to solicit donations, on behalf of Taras Oceanographic Foundation can only include your name as long as there is no reference to your official position as a member of the Environmental Task Force, even where the person or entity being solicited is not a vendor, lobbyist, principal or employer of a lobbyist of the Town.⁴ 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 the Environmental Task Force or any Town department that is subject in any way to the authority, influence, or advice of the Environmental Task Force.⁵ However, an exception to this prohibition exists for charitable solicitations. Under Section 2-444(h), the Code allows

¹ §2-443(a)

² §2-443(b)

³ RQO 11-029; RQO 13-002

⁴ RQO 11-115

⁵ §2-444(b)(1)

officials 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 entity the officials serve.⁶ Therefore, you are not prohibited from soliciting or accepting donations on behalf of Taras Oceanographic Foundation from vendors of the Town while maintaining your position on the board of the non-profit organization, provided that you do so in your private capacity without any reference to your membership on the Environmental Task Force.

However, if you solicit donations in excess of \$100 from any vendor, lobbyist, or principal or employer of a lobbyist who lobbies the Environmental Task Force or any Town department that is subject to the Environmental Task Force's authority, influence, or advice, then you, or Taras Oceanographic Foundation if solicitations are made in your name, must maintain a record of any solicitations from these Town 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.⁷ The solicitation log can be found on the COE's website. In addition, you may not use Town staff or resources in the solicitation of the charitable contributions.⁸ You must also take great care that solicitations accepted on behalf of Taras Oceanographic Foundation do not result in any quid pro quo or other special consideration to the person or entity solicited.⁹

FACTS:

You are a member of the Town of Jupiter's Environmental Task Force, an advisory board. The purpose of the task force is to provide information and recommendations to the Town Council regarding tree preservation related to Town Code revisions and best practices, identify and address open spaces opportunities, and review the Town Code and policies to recommend sustainability initiatives. You are also on the board of a 501(c)(3) non-profit organization called Taras Oceanographic Foundation, which is dedicated to advancing marine science and long-term survival of both people and the oceans, through research, conservation, education, and cultural programs.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a), §2-443(b), §2-444(b)(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.

(b) (1) No advisory board member, or any other person 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

⁶ §2-444(h)(1)

⁷ §2-444(h)(2)

⁸ §2-444(h)(3)

⁹ §2-444(h)(1)

the calendar year from any vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, who lobbies the recipient's advisory board, or any county or municipal department as applicable that is subject in any way to the advisory board's authority, influence or advice.

- (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 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. Bannan,
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

May 21, 2019

Mr. Leonard Rubin, Esquire
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

Re: RQO 19-011
Conflict of Interest

Dear Mr. Rubin,

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 voting conflict arise for a councilmember of the Town of Juno Beach if she votes on the installation of a "no outlet" sign at the entrance to a street on which she owns a home and resides?

ANSWER:

Under the Palm Beach County Code of Ethics, the councilmember is prohibited from using her official position in any manner, including voting or discussion, to give a special financial benefit to specified persons or entities, including herself and her spouse.¹ In the context of the Code, financial benefit constitutes economic gain or loss.² In determining whether an action would result in a special financial benefit being given to a person or entity, the COE has held that any such financial benefit must be direct and immediate, rather than remote and speculative.³ Similarly, the Florida Commission on Ethics has also determined that where there is uncertainty at the time of a vote as to whether a measure directly affects a person or entity, any private gain or loss based on the vote is remote and speculative, and thus the official will not be precluded from casting such vote.⁴

Here, based on the facts provided, it is remote and speculative as to whether her vote regarding the installation of a "no outlet" sign would result in a special financial benefit being given to herself or her husband as property owners. The purpose of the requested sign is to notify members of the public that Atlantic Boulevard is not a through street and does not provide access from Ocean Drive to U.S. Highway One to the west. The installation of a "no outlet" sign would not result in the general public being denied access to Atlantic Boulevard. Although the installation of the sign may reduce misdirected traffic from driving down that road, any impact the sign would have on the value of the property is remote and speculative at best. Because there is not direct causal relationship between this vote and a special financial benefit being given to the councilmember or her husband, any discussion or vote by her on this matter would not be a violation of either §2-443(a), *Misuse of public office or employment*, or §2-443(c), *Disclosure of voting conflicts*.

That being said, the official must also keep in mind that §2-443(b), *Corrupt misuse of official position*, also prohibits public officials from using their official position to corruptly secure or attempt to secure a special privilege, benefit or exemption for themselves or others. Corruptly means done with a wrongful intent and for the purpose of obtaining any benefit resulting from some act which is inconsistent with the proper performance of the official's duties. Based on the facts provided, as long as the councilmember analyzes and reviews the staff recommendation of this matter

¹ §2-443(a), *Misuse of public office or employment*; §2-443(c), *Voting conflicts*

² RQO 10-013

³ RQO 12-063

⁴ CEO 85-77CEO 05-15; CEO 91-61; CEO 12-19

the same as any other matter prior to voting, there is no indication a corrupt misuse by the councilmember would occur by this vote.

FACTS:

You serve as the attorney for the Town of Juno Beach and are requesting an advisory opinion on behalf of Councilmember Peggy Wheeler. The Town was approached by a resident of the Town who seeks to have a "no outlet" sign installed at the intersection of Atlantic Boulevard and Ocean Drive. Atlantic Boulevard is a public street and the right-of-way is unusually large because it was dedicated on one of the original plats for the Town. Consequently, members of the public unfamiliar with the Town often mistake Atlantic Boulevard for a through street when seeking access from Ocean Drive to U.S. Highway One to the west, which the resident complained unduly increases the amount of traffic on the streets within this purely residential neighborhood.

Atlantic Boulevard provides access to a total of 24 dwelling units. Councilmember Wheeler owns the only property that lists Atlantic Boulevard as its address; however, Atlantic Boulevard provides the only access to Ocean Ridge Way and to the 20 townhomes with the Ocean Ridge development and the three single-family lots located on the north side of Ocean Ridge Way. Section 30-1 of the Town Code authorizes the Police Chief, with the consent of the Town Council, to "regulate the operation and parking of vehicles within the Town by the erection or placing of signs, signals, markers, markings and other authorized traffic control devices." Therefore, the placement of the "no outlet" sign will come before the Town Council for a vote prior to its installation.

LEGAL BASIS:

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

Sec. 2-443. Prohibited conduct.

- (a) ***Misuse of public office or employment.*** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (c) ***Disclosure of voting conflicts.*** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or

she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

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