



Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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West Palm Beach, FL 33401

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Commissioners

Peter L. Cruise

Carol E. A. DeGraffenreidt

Michael S. Kridel

Michael H. Kugler

Rodney G. Romano

Executive Director

Mark E. Bannon

Intake and Compliance Manager

Gina A. Levesque

General Counsel

Christie E. Kelley

Investigator

Abigail Irizarry

Investigator

Mark A. Higgs

Agenda

December 10, 2020 – 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 November 5, 2020
- V. Processed Advisory Opinion RQO 20-011 (Consent Agenda)
- VI. Update: Appointees to Review Committee by BCC
- 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**

NOVEMBER 5, 2020

**THURSDAY
1:29 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Peter L. Cruise – Chair
Michael S. Kridel – Vice Chair
Carol E. A. DeGraffenreidt
Michael H. Kugler
Rodney G. Romano

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Mark Higgs, COE Investigator II
Abigail Irizarry, COE Investigator I
Christie E. Kelley, Esq., COE General Counsel
Gina A. Levesque, COE Intake and Compliance Manager

ADMINISTRATIVE STAFF:

Danielle Freeman, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS – None

IV. APPROVAL OF MINUTES FROM SEPTEMBER 3, 2020

MOTION to approve the September 3, 2020 minutes. Motion by Rodney Romano, seconded by Michael Kugler, and carried 5-0.

V. APPROVAL OF MINUTES FROM OCTOBER 1, 2020

MOTION to approve the October 1, 2020 minutes. Motion by Michael Kugler, seconded by Michael Kridel, and carried 5-0.

RECESS

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

RECONVENE

At 2:36 p.m., the meeting reconvened, and at Chair Cruise's request for a roll call, Commissioners DeGraffenreidt, Kridel, Kugler and Romano were present.

VI. Executive Session – C20-001

VI.a.

Vice Chair Kridel read the following Public Report and Final Order Decision:

Mark E. Bannon, Executive Director of the Palm Beach County Commission on Ethics (COE), filed the above-referenced complaint on January 21, 2020, against Respondent, Nohemi Polanco, a city of Pahokee employee, alleging that Respondent's outside business entered into a contract with the City of Pahokee to perform landscaping services, in violation of Section 2-443(d) of the Palm Beach County Code of Ethics.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On November 5, 2020, 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 issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance after determining that the violation was unintentional, inadvertent, or insubstantial.

Therefore, it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Nohemi Polanco, is hereby **DISMISSED** and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on November 5, 2020.

By: Peter L. Cruise, Chair

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

VII. EXECUTIVE DIRECTOR COMMENTS

VII.a.

DISCUSSED: Selection of Candidates.

Mark Bannon COE Executive Director, said that:

- COE candidates were submitted to the Board of County Commissioners (BCC) with a request that the agenda item be placed as soon as possible.
- The Palm Beach County League of Cities was also recommending two candidates.

Chair Cruise asked when BCC voting would take place.

Mr. Bannon replied that the vote to make any changes would go before the BCC and not the voting public.

VII.b.

DISCUSSED: Virtual COE Meetings.

Mr. Bannon stated:

- The COE previously discussed holding shorter meetings virtually since some commissioners lived a great distance away.
- Virtual meetings were previously held according to Governor DeSantis's order.
- The Florida Constitution and The Sunshine Law stated that the public must have access to meetings and that there be a physical quorum of 3 members.
- Exceptions were made on a permanent basis for those with disabilities who could not attend in person.
- An exception in the COE allowed someone who was out of town on a temporary basis to participate by phone as long as there was a physical quorum.

VIII. COMMISSION COMMENTS

VIII.a.

DISCUSSED: Business conducted with a municipality.

Commissioner Kugler stated if anyone had a close family member that wanted to conduct business with a municipality or a government entity an approval is to be obtained, and the code of ethics must be consulted.

VIII.b.

DISCUSSED: Expression of Gratitude.

Commissioner Romano said that he appreciated how well written and concise the complaint reports were. In the future, he would be adding one half hour to his travel time so that he can make it to the meetings.

VIII.c.

DISCUSSED: Expression of Gratitude.

Commissioner DeGraffenreidt stated that she enjoyed today's discussion and that she was impressed by the commissioner's contributions.

IX. PUBLIC COMMENTS – None

X. ADJOURNMENT

At 2:43 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Palm Beach County Commission on Ethics

December 10, 2020

Page 5 of 6
Commissioners

Peter L. Cruise, Chair
Michael S. Kridel, Vice Chair
Carol E.A. DeGraffenreidt
Michael H. Kugler
Rodney G. Romano

Executive Director

Mark E. Bannon

December 3, 2020

Mr. Norm Ostrau, Ethics Officer
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33402-3366

Re: RQO 20-011
Outside employment/Contractual relationship

Dear Mr. Ostrau,

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:

Does the Palm Beach County Code of Ethics (Code) prohibit the outside employer of a city of West Palm Beach commissioner from entering into a contract to provide technology training to the West Palm Beach Downtown Development Authority (DDA)?

FACTS:

You are the Ethics Officer for the city of West Palm Beach, and you are requesting an advisory opinion on behalf of City Commissioner Christina Lambert. In her private capacity, the commissioner works as a sales person for a company that provides technology training. The company trains in e-mail management, tasking, and the science to manage e-mails. She is an employee of the company and also receives a commission for any new clients she signs.

The DDA was created in 1967 as an independent special taxing district to promote and enhance a safe, vibrant city of West Palm Beach for residents, businesses, and visitors through the strategic development of economic, social, and cultural opportunities. The training would be valued at approximately \$9,000.

ANSWER:

Section 2-443(d) of the Code prohibits the commissioner from entering into any contracts with the city of West Palm Beach. This prohibition extends to all contracts between the city and the commissioner, directly or indirectly, and the commissioner's outside employer.¹ Under the facts presented here, the commissioner's outside employer would not be entering into a contract with the public entity that she serves. Instead, the outside employer would be contracting with the DDA, which is a separate public entity. Further, based on the facts provided, there is no indication that the city provides funding to the DDA for it to receive this type of training or that the city would be indirectly paying for the services of the commissioner's outside employer to the DDA. Therefore, the contract between the DDA and the commissioner's outside employer would not be prohibited as long as the city of West Palm Beach is not directly or indirectly providing the funding for the training.

Additionally, the Code prohibits the commissioner from using her official position in any way, including voting, to give a special financial benefit, not shared with similarly situated members of the general public, to herself, her outside employer, or a customer or client of your outside business.² If she is presented with such a conflict, she must publicly disclose the nature of the conflict, file the required state disclosure form, and refrain from participating in and voting on the matter.

¹ Sec. 2-443(d), Contractual relationships

² Sec. 2-443(a), Misuse of public office or employment; Sec. 2-443(c), Disclosure of voting conflicts

Here, for the DDA to be considered a customer or client of her outside employer, her outside employer must have supplied goods or services to the DDA in excess of \$10,000, in the aggregate, over the previous 24 months to the DDA.³ Based on the facts provided, the training provided to the DDA would be valued at approximately \$9,000. As long as the goods or services provided to the DDA by her outside employer for the previous 24 months does not exceed \$10,000, then the DDA would not be considered a customer or client of her outside business, and a voting conflict would not exist based on this contractual relationship should the DDA come before the city commission.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

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

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;
- (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).
- (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. 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

³ Sec. 2-443, Definitions.