



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

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

March 4, 2021 – 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 February 4, 2021
- V. Processed Advisory Opinion RQO 21-011 (Consent Agenda)
- VI. Update: Review Committee Meeting
- 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**

FEBRUARY 4, 2021

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

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

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Mark A. Higgs, COE 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

Chair Peter Cruise offered condolences to Commissioner Carol DeGraffenreidt on her brother's passing.

IV. APPROVAL OF MINUTES FROM JANUARY 7, 2021

MOTION to approve the January 7, 2021 minutes. Motion by Michael Kridel, seconded by Michael Kugler, and carried 3-0. Carol DeGraffenreidt and Rodney Romano absent.

V. ANNUAL REPORT

Mark Bannon, COE Executive Director, said that:

- The COE was in its 11th year of administering and enforcing the County's Code of Ethics (Code), the lobbyist registration ordinance, and the postemployment ordinance.
- The COE's mission statement was to foster integrity in public service, to promote the public's trust and confidence in that service, and to prevent conflicts of interest between private interests and public duties.
- The COE's organization chart has only changed once when a new investigator was added.
- In 2020, the COE's website had 26,100 page views with 11,300 being unique users who did not return to the site.

(CLERK'S NOTE: Rodney Romano joined the meeting.)

- The main page and the training page contained the most views.
- The COE's advisory opinions were searchable by year, subject matter, and a text search.
 - The webpage contained a brief synopsis of each opinion.
 - In 2020, 11 advisory opinions were issued.
 - The average time from the request for an advisory opinion until the proposed written opinion was 12 days.
- 469 advisory opinions were issued since the COE's inception.
 - Opinions mostly involved conflicts of interest, misuse of office laws, and voting conflicts.
 - Few opinions involved the postemployment ordinance.
 - Opinions were steadily decreasing because most of the issues involving the 469 opinions were probably already covered.
- Complaints mostly involved misuse of office, voting conflicts, and corrupt misuse.

- The 3 complaint types were interrelated in Section 2-443 of the Code.
- Anyone could file a complaint, but it must be made under oath and substantially based on personal knowledge of the Complainant.
- Unlike the State COE, complaints could be filed by the COE executive director if it was determined that the incident was credible and could lead to a violation.
- All documents, interviews, and other investigative materials relating to a formal complaint were contained on the COE's website except inquiries.
 - Inquiries were considered public records but for brevity were not included on the website.
- In 2020, 1 new self-initiated complaint and 3 complaints from individuals were opened.
 - 1 complaint was administratively dismissed by the COE executive director; 1 was dismissed with a letter of instruction, and 1 was pending.
 - 6 complaints remained open from 2019, and 1 remained open from 2018.
- In 2020, 8 inquiries were opened.
 - 5 inquiries were found to have no legal sufficiency, and 3 were pending.
 - 6 inquiries were still pending from 2019.
- In 2020, 775 referral calls were received.
 - Many of the calls were referred to another agency, some were general questions, and 1 resulted in an inquiry initiation.
- 80 email requests were received, and 45 individuals were sent prior opinions regarding their issues or concerns.
- The COE operated under budget for 10 consecutive years.
 - \$15,638 was returned to the County's general fund.

- A 2021 project to create 5-minute video clips about the Code's most frequently asked questions was postponed.
 - COVID-19 caused some issues, and the COE was reviewing Code changes.
 - Staff continued to gather and analyze data from existing performance metrics and to update and improve the COE's website.

Responding to questions, Mr. Bannon said that:

- In 2020, 5 complaints came from the Office of Inspector General (OIG).
- Staff also submitted complaints to the OIG once policy issues were determined.

VI. EXECUTIVE DIRECTOR COMMENTS

VI.a.

DISCUSSED: Condolences.

Mr. Bannon offered his condolences to Commissioner DeGraffenreidt.

VI.b.

DISCUSSED: COE Revision Committee (Committee).

Mr. Bannon said that:

- The Committee would hold its initial meeting on Thursday, February 25, 2021, at 10:00 a.m. in the McEaddy Conference Room on the 12th floor of the Governmental Center.
- The documents would be sent to the BCC for adoption once the final versions of the Code, the COE ordinance, and the lobbyist registration ordinance were reviewed and adopted by the Committee.

VI.c.

DISCUSSED: Town of West Lake (West Lake).

Mr. Bannon said that on January 11, 2021, West Lake voted for and signed a 3-year agreement to be included under the COE's jurisdiction. He added that the BCC approved the 3-year agreement on February 2, 2021 and that the COE now had jurisdiction over all 39 municipalities.

VI.d.

DISCUSSED: National High School Ethics Bowl (Bowl).

Mr. Bannon said that he, Chair Cruise, and Vice Chair Michael Kridel participated in the Bowl held remotely on February 1, 2021. He congratulated the Oxbridge Academy's Team 1 for being the overall winning team, as well as all participants and students.

VI.e.

DISCUSSED: Lynn Hubbard Hearing and David DeMarois Case.

Mr. Bannon said that the Lynn Hubbard hearing was continued to April 7 and 8, 2021. He added that the David DeMarois case settled and that he accepted a Letter of Reprimand and paid a \$100 fine.

VII. COMMISSION COMMENTS

VII.a.

DISCUSSED: Condolences and Recognition.

Commissioner Michael Kugler offered his condolences to Commissioner DeGraffenreidt and her family, and he recognized the loss of 2 FBI agents in Broward County.

VII.b.

DISCUSSED: Commendation.

Chair Cruise commended Mr. Bannon and his staff on the COE's annual report.

VIII. PUBLIC COMMENTS

VIII.a.

DISCUSSED: Commendation.

Richard Radcliffe, Executive Director of the Palm Beach County League of Cities commended everyone for their work on the COE's annual report. He added that the county was the epicenter of progressive ethics nationwide.

IX. ADJOURNMENT

At 1:52 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Palm Beach County Commission on Ethics

Commissioners

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

Executive Director

Mark E. Bannon

February 24, 2021

Gene Sapino, Assistant Chief of Police
Delray Beach Police Department
300 West Atlantic Avenue
Delray Beach, FL 33444

Re: RQO 21-001
Gift law

Dear Assistant Chief Sapino,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics has been received and reviewed. The opinion rendered is as follows:

QUESTION 1:

Does the Palm Beach County Code of Ethics (Code) prohibit city of Delray Beach (City) employees, who are recognized as employee of the month, from accepting gift cards as a part of that award if the gift cards are donated by a civic organization?

QUESTION 2:

Does the Code prohibit employees of the Delray Beach Police Department (DBPD) from accepting gift cards to provide to drivers as part of a traffic selective enforcement program?

BRIEF ANSWER:

The Code does not prohibit employees of the DBPD from accepting the gift cards as a part of their award for professional or civic achievement, nor does it prohibit the DBPB from accepting gift cards from a national auto parts corporation when these gift cards are offered for use solely by the municipality for a public purpose.

FACTS:

You are an employee of DBPD, serving as the Assistant Chief of Special Services Bureau. A civic organization would like to provide DBPD with twenty (20) \$50 gift cards to a local restaurant. The gift cards would then be provided to employees receiving employee of the month recognitions throughout the year. The civic organization is not a vendor of the City and is not a lobbyist or principal or employer of a lobbyist who lobbies the City.

A national auto parts corporation would also like to partner with DBPB by donating one hundred (100) \$20 gift cards. The police department would then perform documented traffic selective enforcement and identify vehicles that need repair, such as a broken head light, tail light, tag light, etc. The driver of the vehicle would be provided the gift card to facilitate the repair in lieu of a citation. The distribution of the gift cards would be documented in a Computer Assisted Dispatch

report. The national auto parts corporation is not a vendor of the City and is not a lobbyist or employer of a lobbyist who lobbies the City.

ANSWER:

The Code defines “gift” as the transfer of anything of economic value without adequate and lawful consideration.¹ A gift card would be considered a gift. The Code also prohibits employees or officials from accepting a gift with a value in the aggregate of over \$100 in a calendar year from a vendor or a lobbyist or a principal or employer of a lobbyist who lobbies their governmental employer.² Based on the facts provided, the civic organization and the national auto parts corporation which are providing the gift cards are not City vendors and are not a lobbyists or principal or employers of any lobbyist who lobbies the City. Therefore, City employees would not be prohibited from accepting the gift cards.

The next issue to be addressed is whether the Code requires public employees to report these gift cards as gifts, even where they are going to be “passed on” to members of the public. In general, public employees must report any gifts with a value over \$100. However, Sec. 2-444(g)(1) provides exceptions to the definition of a gift. One such exception is an award for professional or civic achievement.³ Therefore, because the gift cards from the civic organization are being given as a part of the City’s employee of the month award, City employees who received these gift cards do not need to report them, even if they receive the employee of the month recognition multiple times during the calendar year. Another exception is for gifts solicited or accepted by officials or employees on behalf of their public employer for use solely by the municipality for a public purpose.⁴ Whether the gift cards to drivers to help facilitate the needed repairs meets the definition of a public purpose must be determined by City administration or by the City Commission.⁵ As long as it is determined that the gift cards from the national auto parts corporation would be for a public purpose, then the donation of the gift cards would not be considered a gift to employees who receive them and later pass them on to drivers in need of specific vehicle repairs.

Notwithstanding these exceptions to the gift law provision, the donation of these gift cards by any person or entity may not be based on the receipt of any quid pro quo or other improper special benefit from any employee or official of the City.⁶

LEGAL BASIS:

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

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.

¹ §2-444(g)

² §2-444(a)

³ §2-444(g)(1)c.

⁴ §2-444(g)(1)e.

⁵ RQO 15-009; RQO 12-062; RQO 12-044; RQO 11-084

⁶ §2-444(e)

- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
- (1) An official public action taken or to be taken, or which could be taken;
 - (2) A legal duty performed or to be performed or which could be performed; or
 - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics.
 - (2) *All other officials and employees who are not reporting individuals under state law.*
 - b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.
- 1) Exceptions. The provisions of subsection (g) shall not apply to:
 - c. Awards for professional or civic achievement;
 - e. Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose;

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The Palm Beach County Commission on Ethics 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