

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

April 1, 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 March 4, 2021
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 21-002
 - b. RQO 21-003
 - c. RQO 21-004
 - d. RQO 21-005
- VI. Executive Director Comments
- VII. Commission Comments
- VIII. Public Comments
- IX. 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**

MARCH 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
Michael H. Kugler
Rodney G. Romano

STAFF:

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

ADMINISTRATIVE STAFF:

Danielle Freeman, Deputy Clerk, Clerk of the Circuit Court & Comptroller's Office

III. INTRODUCTORY REMARKS- None

IV. APPROVAL OF MINUTES FROM FEBRUARY 4, 2021

MOTION to approve the February 4, 2021 minutes. Motion by Rodney Romano, seconded by Michael Kridel, and carried 5-0.

V. PROCESSED ADVISORY OPINION RQO 21-011 (CONSENT AGENDA)

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

VI. UPDATE: REVIEW COMMITTEE MEETING

Mark Bannon, Commission on Ethics (COE) Executive Director said that:

- The COE Review Committee met on February 25, 2021 to consider proposed COE changes.
 - There was discussion regarding the reasons for some of the changes; however, all changes were accepted. This item could be on the April 6, 2021 BCC agenda.
 - No discussion was necessary to come back before the COE.

VII. EXECUTIVE DIRECTOR COMMENTS

VII.a.

DISCUSSED: Lynn Hubbard.

Mr. Bannon said that:

- The Lynn Hubbard case was set to be heard on April 6 and 7 2021.
 - Ms. Hubbard's attorney filed an appeal based on some of the hearing officer's rulings.
 - Ms. Hubbard had 5 days to respond and then a ruling would be made.
 - No changes by Ms. Hubbard were expected. She was granted everything that she requested and there should not be an emergency continuance.
 - Due to COVID-19 concerns, there was an outstanding matter regarding witnesses appearing in chambers or attending via WebEx. Additional details would be provided at a later time.

VIII. COMMISSION COMMENTS

VIII.a.

DISCUSSED: Expression of Thanks.

Commissioner DeGraffenreidt thanked everyone for the card and the love that was extended for the passing of her brother as well as to those that attended the service.

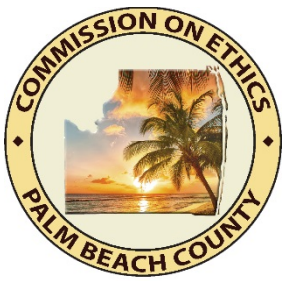
IX. PUBLIC COMMENTS- None

X. ADJOURNMENT

At 1:35 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
Michael H. Kugler
Rodney G. Romano

Executive Director

Mark E. Bannon

March 10, 2021

Ms. Kelly Brandon
Assistant City Attorney
200 N.W. 1st Avenue
Delray Beach, FL 33444

Re: RQO 21-002
Voting Conflict/Conflict of Interest

Dear Ms. Brandon,

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:

May a city of Delray Beach (city) commissioner, who owns a home located adjacent to a proposed right of way, participate in discussions and vote on requests for appeal and land development regulation waivers regarding the proposed right of way?

FACTS:

You are an Assistant City Attorney for the city of Delray Beach. You are seeking an advisory opinion on behalf of one of the city commissioners who lives near a housing development project which is set to move forward to the City Commission for a request for an appeal and a request for waivers of Land Development Regulations.

The Land Development Regulations requires a dedication of a right of way of 25 feet and 45 feet. The developer of the housing development project requested a right of way reduction, which the City Engineer and the city's Development Services Management Group (DSMG) denied. The developer is now requesting an appeal of the decision of the City Engineer and DSMG. Should the appeal be denied or waivers denied by the City Commission and the right of way be dedicated as recommended by the City Engineer and DSMG, it could eventually lead to a developed road (Tangerine Trail) out to Swinton Avenue.

If the appeal request and waiver request is not approved by the City Commission and the developer decides to move forward with a dedication, the dedication via a right of way deed would still have to be considered by the City Commission. To extend the Tangerine Trail right of way to Swinton Avenue, the project would need to be included in the City's Capital Improvement Projects, which is funded by the City Commission.

The commissioner lives adjacent to the property involved in the proposed right of way, across Swinton Avenue but in a different housing development.

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits public officials from using their official positions in any manner which would result in a special financial benefit, not shared with similarly situated members of the general public, to certain persons or entities, including themselves.¹ Similarly, the Code also prohibits public officials from voting on such an issue or participating in any matter which would result in a special financial benefit to themselves.²

In evaluating whether a conflict of interest exists, the degree to which there is uncertainty at the time of the vote as to whether any special financial benefit would be received by a prohibited person or entity must be considered.³ "Financial benefit" constitutes economic gain or loss. To constitute a prohibited voting conflict, the possibility of the financial gain or loss must be direct and immediate, rather than remote and speculative. Where an official's gain or loss would require many steps and be subject to many

¹ Section 2-443(a)

² Section 2-443(c)

³ 112.3143(1)(d), Florida Statutes

contingencies, any gain or loss is remote and speculative and cannot be said to inure to one's special financial benefit.⁴ In addition, the Florida Commission on Ethics has previously held that if a gain or loss to an official resulting from a particular measure is too remote and speculative, it does not constitute a special financial benefit.⁵

Based on the facts provided, the City Commission will be voting on the requests for appeal and waivers by the developer regarding the reduction of the dedication of right of way along Tangerine Trail. Although the developer may receive a financial benefit (gain or loss) depending on the outcome of the vote, there is uncertainty as to whether there would be any economic gain or loss to the value of the commissioner's property from this vote. An approval or denial of the appeal request would not have any direct and immediate impact of the value of the commissioner's property. Thus, any financial benefit that the commissioner may receive is remote and speculative. Because the vote has no direct and immediate financial benefit to the commissioner, the commissioner is not prohibited from participating in and voting on this request for an appeal.

LEGAL BASIS:

The legal basis for this opinion is found in §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;
- (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 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,

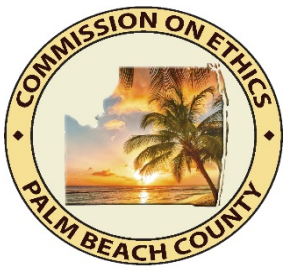


Mark E. Bannon,
Executive Director

CEK/gal

⁴ RQO 12-063, CEO 05-15, CEO 91-61, CEO 12-19

⁵ CEO 85-77 (school board member who owned business near the site of a proposed school district building was not prohibited from voting on the matter); CEO 85-87 (city council member was not prohibited from voting on a site plan for a shopping center which was to be located adjacent to the florist store which he owned)



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April 1, 2021

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Commissioners

Peter L. Cruise, Chair

Michael S. Kridel, Vice Chair

Carol E.A. DeGraffenreidt

Michael H. Kugler

Rodney G. Romano

Palm Beach County Commission on Ethics

Executive Director

Mark E. Bannon

March 19, 2021

Mr. Tracy Wilkins
1233 45th St, Ste C-1
West Palm Beach, FL 33407

Re: RQO 21-003
Advisory Board/Conflict of Interest

Dear Mr. Wilkins,

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 prohibited conflict of interest exist for you if you were to serve on the county's Community Action Advisory Board (CAAB) when the Duo Center, which is both your outside employer and a non-profit of which you serve as an officer or director, participates in the county's summer camp scholarship program?

FACTS:

You are the Vice President of The Duo Center, a private entity, which is located in West Palm Beach, and you receive compensation for your service. The Duo Center offers a summer camp for indigent children.

Palm Beach County's Youth Services Department has a summer camp scholarship program which pays full tuition and associated fees for eligible children to attend day camp during their summer break. The Duo Center is one of approximately 125 summer camp providers from which eligible parents can choose to send their children. The Palm Beach County Board of County Commissioners and the Children Services Council provide the funding for the summer camp scholarships.

You have been asked to serve on the CAAB. According to the CAAB website, CAAB consists of 15 members. Five members are elected public officials or their appointees; five members are representatives of business, industry, religion, education or other major groups or interests; and five members are democratically selected by the board to assure that they are representatives of the poor in the areas served. The role of CAAB is to administer programs of the Florida Department of Economic Opportunity and other agencies, to work with underprivileged individuals and the public and private sectors to identify and eliminate causes of poverty in the community, and to develop priorities for use of resources.

ANSWER:

In general, you would not be entitled to an advisory opinion because you are not currently under the jurisdiction of the Palm Beach County Code of Ethics (Code). COE Rule of Procedure 2.2 states, in relevant part, that only persons who are under the jurisdiction of the Code may request an advisory opinion regarding the interpretation or application of the Code.¹ However, since your appointment to CAAB would bring you under the Code, and you are seeking an opinion proactively to avoid any potential issues, the COE will make an exception and provide an opinion.

¹ COE Rule of Procedure 2.2

As an advisory board member, you are considered an "official" under the Code.² As an official, you are prohibited from using your official position in any manner which would result in a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities, including your outside employer or a non-profit organization of which you are an officer or director.³ Similarly, the Code also prohibits you from voting on any issue or participating in any matter which would result in a special financial benefit to these same prohibited persons or entities.⁴

Based on the facts provided, as the vice president of the Duo Center, the Duo Center is a non-profit organization of which you are an officer or director. In addition, the Duo Center is also considered your outside employer because you receive compensation for your services. However, there is no *per se* prohibition against you accepting this position, so long as you follow the guidelines listed in this opinion. Therefore, if you choose to accept the position as a member of CAAB, you are prohibited from using your official position as a CAAB member to give a special financial benefit, not shared with similarly situated members of the general public, to the Duo Center. You are also prohibited from attempting to influence other CAAB members or county staff in any way to give a special financial benefit to the Duo Center. Likewise, if a matter before CAAB will result in a special financial benefit to the Duo Center, you must publicly disclose the nature of the conflict, file a state voting conflict form (8B) and submit a copy to the COE, refrain from voting on the matter, and not participate in or otherwise influence the process.

LEGAL BASIS:

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

Sec. 2-442. Definition.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid...The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi-judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal, regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses;

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:

- (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;

² Section 2-442, Definitions.

³ Section 2-443(a), Misuse of public position or employment.

⁴ Section 2-443(c), Disclosure of voting conflicts.

(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 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.

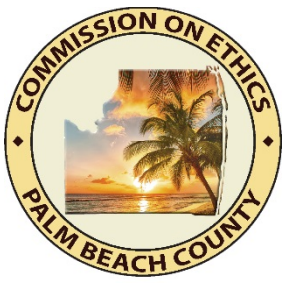
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Mark E. Bannon". The signature is written in a cursive style and is enclosed within a light blue oval.

Mark E. Bannon,
Executive Director

CEK/gal



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April 1, 2021
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Commissioners

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

Palm Beach County Commission on Ethics

Executive Director

Mark E. Bannon

March 17, 2021

Ms. Virginia Savietto
301 N Olive Ave, 12th Floor
West Palm Beach, FL 33401

Re: RQO 21-004
Outside Employment

Dear Ms. Savietto,

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 you as a county employee from working as a freelance graphic designer in your private capacity?

BRIEF ANSWER:

The Code does not prohibit you from working as a graphic designer in your private capacity during non-work hours as long as you follow the requirements of the Code as described in this advisory opinion.

FACTS:

You were previously the Graphic Designer for the county's Public Affairs Department for almost 13 years, before you left the county to work for a private company. You have returned to county employment, working as an administrative assistant for Commissioner Weiss since November 2018.

As a graphic designer, you have won numerous national and local design awards. You usually do pro-bono design work to help agencies, including a design project that you will be doing for Pahokee Housing Authority (PHA) this month. PHA stated that they love the work you and have expressed interest in hiring you as a freelancer in the near future to help them with design, branding, and other areas once they can secure a grant.

You perform your graphic design work on your own computer with your design programs and high-end images during non-county work hours.

ANSWER:

As a county employee, the Code prohibits you or your outside business from entering into any contract or other transaction for goods or services with the county.¹ The Code defines an outside business as any entity in which you or specified relatives have an ownership interest of at least five percent.² Thus, your graphic design business would be your outside business under the Code. The Code also prohibits you from entering into contracts or providing services to any person or entity who is a current vendor of the county unless the part-time employment exception applies.³ The part-time employment exception applies when a public employee's outside employer has a contract for goods or services with his or her public employer and certain conditions are met. The Code defines an

¹ §2-443(d)

² §2-442

³ §2-443(e)(5); RQO 15-035

"outside employer" as any entity of which the public employee is an employee.⁴ However, persons employed on a contractual basis are classified as independent contractors and are not considered "employees" as defined by the Code.⁵ Therefore, the part-time employment exception most likely does not apply to your situation, unless you are an employee of the entity for which you are performing the graphic design work.

Therefore, based on the facts provided, you will not be in violation of the prohibited contractual relationships provision of the Code if you work as a graphic designer in your private capacity as long as your client is not a vendor of the county, you or your outside business do not enter into any contract or other transaction for goods or services with the county, directly or indirectly, and you operate your graphic design business outside of your county work hours using your personal software and equipment,.

In addition, the Code prohibits you, as a county employee, from using your official position with the county to give a special financial benefit to specified persons or entities, including yourself, your outside business, or a customer or client of your outside business.⁶ The Code defines a customer or client as a person or entity to which your outside business has supplied goods or services during the previous 24 months in excess of \$10,000.⁷ Therefore, you must also take great care not to misuse your governmental employment in any way to give a special financial benefit to yourself, your outside business, or any customer or client of your outside business. This would include using your position with the county to influence another person to take some action which would give a special financial benefit to your customers or clients, soliciting business during your county work hours, and identifying yourself as a county employee on any written or verbal communication to attempt to obtain a customer.

Finally, you are reminded that you must also comply with the county's merit rules regarding outside employment.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a)(1), (4), (5), §2-443(d), and §2-443(e)(5) 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).

Outside employer or business includes:

- (2) Any entity located in the county ... 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...

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes an owner, director, manager or employee.

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;

⁴ §2-442

⁵ RQO 11-020

⁶ §2-443(a)

⁷ §2-442

- (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.
- (e) **Exceptions and waiver.** In addition, no official or employee shall be held in violation of subsection (d) if:
- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
- a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and
 - b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable; and
 - c. The employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
 - d. The employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and
 - e. The employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and
 - f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the commission on ethics. The document shall contain written acknowledgment of compliance with the provisions of subsection (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor and chief administrative officer of the county or municipality.

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.

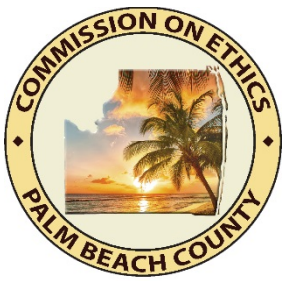
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,
Executive Director

CEK/gal



Honesty - Integrity - Character

Palm Beach County Commission on Ethics

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

March 26, 2021

Ms. Lawonda R. Warren, Esquire
Assistant City Attorney/Police Legal Advisor
300 West Atlantic Avenue
Delray Beach, FL 33444

Re: RQO 21-005
Gift law

Dear Ms. Warren,

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:

Would it violate the Palm Beach County Code of Ethics (Code) if a non-profit organization purchases a vehicle as a donation to the city of Delray Beach (City) and the title and registration are transferred directly from the dealership to the City?

FACTS:

You are an employee of the City, serving as the Assistant City Attorney/Police Legal Advisor. A local non-profit organization would like to purchase and donate a vehicle to the City. The non-profit organization is not a vendor of the City and is not a lobbyist or a principal or employer of a lobbyist who lobbies the City. The City would follow the proper procedure to comply with the City's gift policy. The City is unsure if there would be any Code violations if the vehicle is titled and registered directly from the dealership that the vehicle is purchased from to the City, or if the title is transferred from the dealership to the non-profit organization and then to the City.

ANSWER:

The Code prohibits any 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.¹ The Code defines "gift" as the transfer of anything of economic value without adequate and lawful consideration.² The donation of a vehicle to the City would be considered a gift. Based on the facts provided, the local non-profit organization which is purchasing the vehicle to give to the City is not a City vendor and is not a lobbyist or a principal or employer of any lobbyist who lobbies the City. In addition, the donation would be to the City and not to a specific City employee or official. As such, the City would not be prohibited from accepting the donated vehicle.

Further, the Code does not prohibit the City from having the vehicle titled and registered directly from the dealership to the City or from having the title transferred from the dealership to the non-profit organization and then to the City. Because the vehicle is being purchased by the non-profit organization on behalf of the City, in either scenario, the non-profit organization is the source of the gift to the City.

Although the gift law provision does not prohibit the acceptance of this gift, the donation of the vehicle by the local non-profit organization 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.³

¹ §2-444(a)

² §2-444(g)

³ §2-444(e)

LEGAL BASIS:

The legal basis for this opinion is found in the §2-444(a)(1), §2-444(e), 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.
- (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.
- (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