

Honesty - Integrity - Character

Palm Beach County
Commission on Ethics
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West Palm Beach, FL 33401
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Hotline: 877.766.5920
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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

June 3, 2021 – 9:30 a.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 9:30am
Executive Session will begin at 9:45am
Regular Agenda will resume at 10:30am

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from May 6, 2021
- V. Executive Session – C20-003
- VI. Processed Advisory Opinion (Consent Agenda)
 - a. RQO 21-009
- 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 6, 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 – Absent

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:

Marisa Valentin, Deputy Clerk, Clerk of the Circuit Court & Comptroller's Office

III. INTRODUCTORY REMARKS - None

IV. APPROVAL OF MINUTES FROM APRIL 1, 2021

MOTION to approve the April 1, 2021 minutes. Motion by Carol DeGraffenreidt, seconded by Michael Kugler, and carried 4-0. Rodney Romano absent.

RECESS

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

RECONVENE

At 2:06 p.m., the meeting reconvened, and at Chair Cruise's request for a roll call, Commissioners DeGraffenreidt, Kridel, and Kugler. Commissioner Romano was absent.

V. EXECUTIVE SESSION – C21-004

VI.a.

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

Mark E. Bannon, Executive Director of the Palm Beach County Commission on Ethics (COE); filed the above-referenced complaint on February 25, 2021, against Respondent, Gary Brandenburg, the former City Attorney for the city of Pahokee, alleging that Respondent gave a gift over \$100 to a city official, in violation of Section 2-444(a)(2) of the Palm Beach County Code of Ethics.

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 6, 2021, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, the Probable Cause Recommendation, and the Negotiated Settlement Agreement submitted by the COE Advocate and the Respondent. After an oral statement by the Advocate and the Respondent, the Commission found that probable cause existed to believe that a violation of the Palm Beach County Code of Ethics had occurred and issued a Letter of Instruction pursuant to Section 2s260.3 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, Gary Brandenburg, 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 May 6, 2021.

By: Peter L. Cruise, Chair

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

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. RQO 21-006

VI.b. RQO 21-007

VI.c. RQO 21-008

MOTION to approve the consent agenda. Motion by Michael Kugler, seconded by Michael Kridel, and carried 4-0. Rodney Romano absent.

VII. EXECUTIVE DIRECTOR COMMENTS

Mark Bannon, COE Executive Director, stated that in June the ethics ordinance changes were going before the BCC and the final hearing was scheduled on the 2nd and 3rd for Lynne Hubbard.

VIII. COMMISSION COMMENTS – None

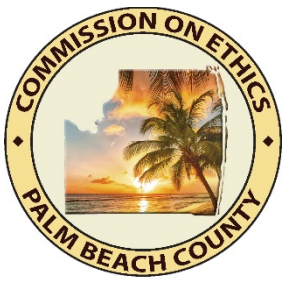
IX. PUBLIC COMMENTS – None

X. ADJOURNMENT

At 2:15 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



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Palm Beach County Commission on Ethics

June 3, 2021
COE Meeting
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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

May 13, 2021

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

Re: RQO 21-009
Conflict of Interest

Dear Mr. Ostrau,

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:

Does a prohibited conflict of interest exist for a commissioner for the city of West Palm Beach who is employed by a non-profit foundation, which leases building space from the city for \$1 per year?

FACTS:

You are the Ethics Officer for the city of West Palm Beach and are requesting this advisory opinion on behalf of Shalonda Warren, a city commissioner.

Commissioner Warren took office April 1, 2021 and is also an at-will employee of the Sickle Cell Foundation of Palm Beach County (Foundation), a 501(c)(3) charitable organization. The commissioner is employed as the CEO of the Foundation and supervises nine employees.

The Foundation has leased building space in a city building since 1983 for \$1 per year. The building was in disrepair and has been demolished. A new structure is going to be built and space will be available to the Foundation during construction. Once the construction is completed, there will be a new lease based on the same terms and conditions of the 1983 lease, as amended in 1986.

The city is a strong Mayor form of government, and the management of the construction and lease will not be matters dealt with by the city commission. However, Commissioner Warren may be involved in matters concerning budget items relating to the city's maintenance obligations of the building.

The Foundation's board of directors has designated a board member to be the person involved in the negotiations and management of the lease and has relieved Commissioner Warren of those duties.

ANSWER:

The Palm Beach County Code of Ethics (Code) prohibits the official from using her official position as a city commissioner in any way, including influencing others to take some action, which would result in a special financial benefit to specified persons or entities.¹ An outside employer is among those specified persons or

¹ §2-443(a)

entities. Similarly, the Code prohibits her from participating in discussions or voting on any matter that would give a special financial benefit to her outside employer.² The Code further prohibits her from using her official position as a city commissioner to corruptly secure a special benefit for any person or entity.³ Corruptly means an official action taken with wrongful intent and for the purpose of receiving any benefit, which is inconsistent with the proper performance of her public duties.⁴ Based on the facts submitted, a prohibited conflict of interest would not exist as long as the commissioner remains completely removed from any negotiations or the management of the lease between the city and the Foundation, does not use her official position to influence the process in any way, does not participate in discussions or vote on any matter which would give a special financial benefit to the Foundation, and does not wrongfully use her official position to corruptly secure any special benefit for the Foundation, including a benefit that is not financial in nature. In addition, to avoid any appearance of impropriety, Commissioner Warren should not be the Foundation's representative who signs the contract between the city and the Foundation, even though she will not be involved in the negotiations.

The Code also prohibits Commissioner Warren's outside business from entering into any contract or transaction for goods or services with the city, unless an exception applies. Section 2-443(e)(4) provides such an exception where the total amount of the contracts or transactions in the aggregate between an official's outside business and the public entity he or she serves does not exceed \$500 per calendar year. Based on the facts provided, the contract between the city and the Foundation is for an annual rent amount of one dollar (\$1) per year, which falls well below the \$500 threshold. Therefore, a prohibited contract does not exist between the commissioner's outside employer and the city.

LEGAL BASIS:

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

² §2-443(c)

³ §2-443(b)

⁴ Id.

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.

(e) Exceptions and waiver. In addition, no official or employee shall be held in violation of subsection (d) if:

(4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.

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

