

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

August 5, 2021 – 1:30 p.m.

Governmental Center,

301 North Olive Avenue, 6th Floor

Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session will begin at 1:45pm
Regular Agenda will resume at 2:30pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from July 8, 2021
- V. Executive Session – C21-005
- VI. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 21-010
 - b. RQO 21-011
- 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**

JULY 8, 2021

**THURSDAY
1:34 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 – Absent
Rodney G. Romano

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 JUNE 3, 2021

MOTION to approve the June 3, 2021 minutes. Motion by Michael Kridel, seconded by Rodney Romano, and carried 4-0. Michael Kugler was absent.

V. EXECUTIVE DIRECTOR COMMENTS

V.a.

DISCUSSED: Amended Code of Ethics/Commission on Ethics Ordinances and Commendation.

Mr. Bannon notified the Commission that at the June 15 regular meeting the BCC approved the amended Code of Ethics and Commission on Ethics ordinances, and they went into effect July 1, 2021. He thanked the League of Cities, its attorneys, and the Commission on Ethics staff for all their hard work in preparing the ordinances for presentation to the BCC.

VI. COMMISSION COMMENTS – None

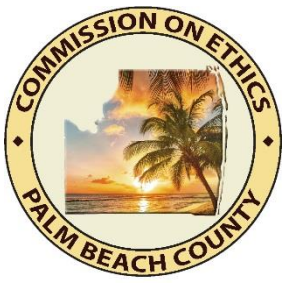
VII. PUBLIC COMMENTS – None

VIII. ADJOURNMENT

At 1:36 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Honesty - Integrity - Character

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

July 19, 2021

Ms. Laurie Cohen, Village Attorney
Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

Re: RQO 21-010
Charitable solicitation

Dear Ms. Cohen,

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:

How can an elected official who serves on the board of a non-profit organization avoid violating the Palm Beach County Code of Ethics (Code) while soliciting for donations on behalf of the organization?

BRIEF ANSWER:

The Code does not prohibit elected officials or employees from participating in charitable fundraising, provided that any solicitation or acceptance of donations in excess of \$100 from a person they know, or should know with the exercise of reasonable care, is a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies their municipal government, is transparently recorded in accordance with the charitable solicitation requirements of the code. They must also refrain from using their official position while soliciting on behalf of an organization of which they are an officer or director.

FACTS:

You are the Village Attorney for the village of Wellington (Village) and are requesting this advisory opinion on behalf of Councilwoman Tanya Siskind. Councilwoman Siskind has been asked to serve on the board of the Education Foundation of Palm Beach County (Foundation). If she were to join the board, she would be asked to either make a personal donation of a specified dollar amount or raise funds for the organization. The organization would also feature a photograph of her on its website and would list her biographical information, including the fact that she is currently a Village councilwoman. Your reading of section 2-444(h) is that if she is a board member of the Foundation, she cannot solicit funds in her official capacity, but may do so in her individual capacity, provided there is no quid pro quo, the person or entity solicited has no pending application for award or approval of any nature before the Village, she maintains a solicitation log, and she does not use Village staff or other Village resources in the solicitation of charitable contributions. You are seeking confirmation that this analysis is correct.

In addition, Ms. Siskind will be running for reelection to the Village Council in the upcoming March election. You would also like to know if she may donate leftover campaign funds to the organization.

ANSWER:

As an official, Councilwoman Siskind must ensure that she abides by all provisions of the Code. Before we address the requirements for charitable solicitations, Councilwoman Siskind is reminded that she is prohibited from using her official position, or influencing others to take some action, to give a special financial benefit to specified persons or entities, including any organization of which she is an officer or director.¹ Similarly, she is prohibited from voting on or participating in any matter that would result in a special financial benefit to an organization of which she is an officer or director.²

Based upon the facts provided here, if she becomes a board member of the Foundation, Councilwoman Siskind would be prohibited from using her position on the Village Council in any way, including voting on or participating in any matter, to give a special financial benefit to the Foundation. If any such matter comes before the Village Council, she must publicly disclose the nature of her conflict, file the required state disclosure form, and refrain from voting on and participating in the matter.³ Although the Code does not prohibit her from fundraising on behalf of the Foundation, Councilwoman Siskind is prohibited from using her name and official title as a Village councilwoman on any fundraising effort on behalf of the Foundation. Lending her name and official title as a council woman would per se constitute using her elected position to give a special financial benefit to an organization of which she is a board member.⁴ This prohibition applies directly to her and to anyone soliciting on her behalf. In other words, any fundraising, including letters sent to solicit donations, on behalf of the Foundation would need to be in her name alone without reference to her status as a Village councilwoman.

With regards to charitable solicitations, in general, §2-444(a)(1) of the gift law provision prohibits public officials and employees from soliciting or accepting a gift worth more than \$100 from a vendor or lobbyist. However, §2-444(h) provides an exception to this prohibition to allow for charitable solicitation on behalf of a non-profit organization. Under §2-444(h), officials and employees must maintain and submit a log of all solicitations or donations in excess of \$100 from vendors or lobbyists doing business or lobbying their public employer or the entity they serve. Therefore, if Councilwoman Siskind solicits donations, directly or indirectly, in excess of \$100 from a vendor of the Village or a lobbyist or principal or employer of a lobbyist who lobbies the Village, she must maintain a record of those solicitations and submit a log to the COE within 30 days of the event, or if no event, within 30 days of the solicitation. Further, she may not solicit donations from any person or entity with a pending application before the Village.⁵ The revised Code, which took effect July 1, 2021, removed the prohibition against using Village staff or other Village resources in the solicitation of charitable contributions. That prohibition was removed to allow local government to use personnel and resources on endeavors that they determine serve some “public purpose.”

Further, the Code does not prohibit her from having her professional experience, including her elected position, outlined on the Foundation’s website as a general listing of her background experience. The mere listing of this information on a resume for the website would not be a violation of the Code. Again, she is reminded that any solicitation of donations must not include reference to her status as a Village councilwoman. Additionally, she must take great care to not use her official position on the Village Council to corruptly offer or give any quid pro quo or other benefit to any person in exchange for supporting the Foundation.

The COE cannot opine on the use of any leftover campaign funds by Ms. Siskind because that issue is not within the scope of the COE’s jurisdiction.

¹ §2-443(a)(7)

² §2-443(c)

³ Id.

⁴ RQO 12-081, RQO 16-019

⁵ 2-444(h)(1)

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-443(b), §2-443(c), §2-444(a)(1), §2-444(e), §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.
- (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).

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.
- (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.

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.

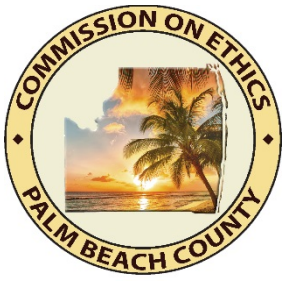
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon
Executive Director

CEK/gal



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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

July 29, 2021

Ms. Laurie Cohen, Village Attorney
Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

Re: RQO 21-011
Misuse of office

Dear Ms. Cohen,

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 you violate Section 2-443(a) of the Palm Beach County Code of Ethics (Code) if the Wellington Historical Society (Society), of which you are the president, enters into a co-sponsorship agreement with the village of Wellington (Village), your public employer?

FACTS:

You are the Village Attorney for the village of Wellington (Village). You are also the President of the Society. One of the Society's board members has asked the Village about the possibility of entering into a co-sponsorship agreement. You have not been involved in those discussions. The Village co-sponsors other organizations and events. The co-sponsorship agreement would be approved by the Village Council and would provide, among other things, that:

- The Society will provide educational programming for Wellington residents;
- The Society will participate in Wellington community events when the parties believe such events to be within the scope of the Society's purpose;
- The Society will provide historically-oriented programming for the community television channel;
- The Society will make recommendations for additions to the Wellington founders plaque;
- The Society would have periodic use of a room at the Community Center without charge on a first come first served basis and would be able to use a room for two evening events per year at no charge; and
- The Village will, when possible, make its communications staff available to the Society to assist with video and other productions.

No funds would be paid by the Village to the Society, and no funds would be paid by the Society to the Village. The Society and the Village would be providing services for each other. You plan to have no involvement in the negotiation of any terms of the co-sponsorship agreement, will not influence the Village Council members concerning the agreement, and will not execute the agreement on behalf of the Society.

ANSWER:

Section 2-443(a) of the Code prohibits you as a Village employee from using your official position to give a special financial benefit to specified persons and entities. Among those specified persons and entities is an organization of which you serve as an officer or director. Therefore, because you are on the board of directors of the Society, you are prohibited from using your official position as the Village Attorney, or influencing others to take some action, to give a special financial benefit to the Society.

The question is whether the co-sponsorship agreement would give a special financial benefit to the Society. Based on the facts provided, no funding would be involved in the agreement. Instead the co-sponsorship agreement would allow the Society to perform services for the Village, such as providing educational programming for Village residents, and in exchange the Village will provide services to the Society, such as periodic use of a room at the community center. The Village already offers such co-sponsorships to other organizations. As such, the co-sponsorship agreement would not result in a special financial benefit to the Society.

Although a special financial benefit would not be involved, to avoid the appearance of impropriety, it is recommended that you remain completely removed from any negotiations or discussion regarding the agreement and you should not be one of the representatives who executes the agreement between the Village and the Society. Further, you are reminded that the Code also prohibits you from using your position to corruptly secure a special benefit, financial or otherwise, for yourself or others. Therefore, you must refrain from using your position with the Village to corruptly secure a special benefit for the Society. For example, this includes using your position to give the Society preferential treatment for use of the community center.

LEGAL BASIS:

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

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