

*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](mailto: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*

September 2, 2021 – 1:30 p.m.  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

**Meeting will begin at 1:30pm**  
**Executive Session will begin at 2:00pm**  
**Regular Agenda will resume at 3:30pm**

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- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from August 5, 2021
- V. Review of Executive Director Hiring Process
- VI. Executive Session
  - a. C21-006
  - b. C21-003
- VII. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 21-012
  - b. RQO 21-013
- VIII. Executive Director Comments
- IX. Commission Comments
- X. Public Comments
- XI. 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**

**AUGUST 5, 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 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 JULY 8, 2021**

**MOTION to approve the July 8, 2021 minutes. Motion by Rodney Romano, seconded by Michael Kugler, and carried 5-0.**

**RECESS**

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

## RECONVENE

**At 2:31 p.m., the meeting reconvened, and at Chair Cruise's request for a roll call, Commissioners DeGraffenreidt, Kridel, Kugler, and Romano were present.**

### **V. EXECUTIVE SESSION – C21-005**

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

Complainant, Christopher Mitchell, filed the above referenced complaint on March 16, 2021, alleging Respondent, Juli Casale, violated §2-443(b), Corrupt misuse of official position, of the Palm Beach County Code of Ethics by using her position as a city of Delray Beach commissioner to harm, or attempt to harm, his business.

Pursuant to §2-258(a)1 of the Palm Beach County Commission on Ethics Ordinance, the Palm Beach County Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. On August 5, 2021, the Commission conducted a hearing and reviewed the Report of Investigation and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and Respondent's attorney, the Commission concluded that probable cause does not exist because there was no evidence that Respondent's actions violated the Palm Beach County Code of Ethics.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Juli Casale, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on August 5, 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)**

**a. RQO 21-010**

**b. RQO 21-011**

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

**VII. EXECUTIVE DIRECTOR COMMENTS**

Mark Bannon, COE Executive Director, stated that:

- Staff was working closely with the County Attorney's Office in establishing that hearing officers may be able to receive remuneration under the same type of contracts as code enforcement.
- Five new applications for the position of hearing officer had been received.
- He submitted his letter of retirement effective December 31, 2021.

**VIII. COMMISSION COMMENTS**

Chair Cruise, Vice Chair Kridel, and Commissioners DeGraffenreidt, Kugler, and Romano expressed their gratitude and well wishes for Mr. Bannon on his impending retirement.

**IX. PUBLIC COMMENTS – None**

**X. ADJOURNMENT**

**At 2:40 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair

# HIRING PROCESS FOR COE EXECUTIVE DIRECTOR

Initially, there were a set of rules established by the commission for the commissioners to follow voluntarily:

1. No direct communications with any applicant or advocate for an applicant (No private lobbying);
2. No public statements outside COE meetings regarding potential applicants (No public statements in favor of or opposed to any applicant);
3. Any communications or endorsements should be sent to COE central staff for distribution to all commissioners – no individual commissioner should receive communications about applicants (Communications should be sent to COE as a whole rather than to any individual).

## General hiring process:

Agreed upon advertisement was published approximately 3 weeks in local and national sources to capture a diverse group of candidates. (The 2015 advertisement is attached)

Advertisement yielded 41 applications, and HR separated the applications by who met minimum qualifications. Approximately 1 week after the advertisement closed, HR sent all applications by email (those who met the Minimum Qualifications, and all others) to the commissioners to begin their review.

Approximately 1 week after commissioners received the applications, they were asked to email a list of their top 10 candidates (no ranking necessary) to HR to create a summary of responses received that would serve as a list of potential candidates for the COE to short list.

At the next COE meeting, the commission determined a short list of candidates and voted on a date for the interviews. In 2015, there were 5 finalists, and the interviews were completed in 1 day (11am – 5pm).

Prior to the interviews, finalists were asked to provide 2 letters of reference, complete a professional conduct questionnaire that was created through the county attorney's office, and a required background check was finished. Note that in subsequent similar multi-step, public selection processes, various panels have expressed limited utility in letters of reference and have decided to forego them; the COE may wish to continue to request them or not.

HR guided the COE through the process as to structure and guidelines.

HR is responsible for inviting final candidates to the interview process; COE staff is responsible for arranging travel and processing related reimbursements if there are candidates from out of town. The COE must also decide if they wish to provide relocation assistance, which would be funded through the COE budget.

Prior to the interviews, each commissioner was asked to submit 2-3 questions to HR that they would ask the candidate. The questions were compiled/combined into a list of 20 questions. Each candidate is asked the same 20 questions, and the questions are divided among the commissioners so each commissioner asks the same questions of each candidate. The list of questions are not public record until the day of the interview.

Each candidate interviewed for 45 minutes and was asked to complete a 30 minute written exercise for review by the commission at the end of all of the oral interviews.

A period of public comment was held at the conclusion of the written exercise review.

The interviews were broadcast live on channel 20 and the choice for the next Executive Director was made the same day. However, the COE should keep in mind that if the negotiations fall through, there needs to be a choice 2 so that the process does not have to take place again.

The entire process took about 12 weeks.

Print

Close

[View Job Announcement](#)

## PALM BEACH COUNTY

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### BOARD OF COUNTY COMMISSIONERS

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Issued: 09/21/2015      Closes: 10/09/2015

Position: EXECUTIVE DIRECTOR, COMMISSION ON ETHICS, PALM BEACH COUNTY

Salary: Negotiable Depending on Qualifications, range of \$121,490 to \$133,000 Annually

Department: Commission on Ethics

Hours: 8:00 A.M. to 5:00 P.M., Monday - Friday

Other: Valid Florida Driver's License and PBC Risk Management Department approval prior to appointment.  
**This is an AT WILL position.**

Use the Job ID based on the Position Location as follows:

Location	Job ID
West Palm Beach, Florida	11075

Palm Beach County (PBC), Florida, is soliciting applicants for the position of Executive Director, for the PBC Commission on Ethics (COE). In this highly responsible administrative role, you will lead an independent agency that provides advisory and quasi-judicial services, dedicated to strengthening public trust in local government. The Palm Beach County COE has been recognized as one of the most independent and innovative ethics programs in the country. This position oversees the daily operations of the Palm Beach County COE. The selected candidate will work with dedicated, expert staff on enforcement issues, interpretation and development of ethics rules, and community outreach. Responsible for designing and implementing training and education programs for public officials and employees, county and municipal vendors, lobbyists and principals and other entities that may come under the jurisdiction of the COE by contract or ordinance. Develops policies, programs and strategies to deal with all ethics related matters. In addition, will prepare and edit legal and informational documents for the COE and general public.

Reviews applicable codes and ordinances and recommends changes to the COE based

upon the ongoing application of these laws. Plans, directs and establishes administrative policy to effectively allow the department to carry out its mission. Reviews ethics inquiries and investigations, files self-initiated complaints, determines legal sufficiency of complaints, writes, reviews, edits documents and submits to the COE for approval. Makes Court appearances where COE decisions are contested. Creates and publishes periodic reports for the governing boards under the jurisdiction of the COE and to the community at large on matters relative to the official activities, public findings and economic impact of the COE's activities. Prepares and presents annual budgets to the COE and BCC for approval.

The Ethics Commission shall provide broad policy and directional goals which the successful candidate will be responsible for carrying out with minimal supervision or interference.

The selected candidate will not become actively involved in political activities, will not attempt to utilize the position for personal gain and will avoid all appearances of potential conflict that might be perceived to impair the independence of the office.

**Minimum Requirements:** Bachelor's and Juris Doctor Degrees; five (5) years of experience in any one or a combination of the following fields: As a Federal, State, or Local law enforcement officer/official/prosecutor; as a Federal or State court judge or judicial clerk; as a Federal, State, or Local government attorney with expertise in investigating fraud, mismanagement, corruption and/or advising public officials on their ethical obligations; as an Ethics Officer, Inspector General, Certified Public Accountant, or Internal Auditor; as a person with progressive supervisory and management experience in an investigative public agency similar to an Ethics Office; as an ethics officer; one (1) year of related supervision; current membership in good standing and a minimum five (5) years membership in the Florida Bar. Candidates must state in their application materials their minimum salary requirement.

Preferred Qualifications include participation in business, government, professional and community-based organizations; prior legal related work in an ethics office; certification or other experience relating to white collar crime or official corruption prosecution or equivalent civil action; teaching or directing college, university or law school level classes or programs involving public administration or ethics in government and/or publication in the field of government or corporate ethics. Demonstrated experience in legal pleadings, community speaking and outreach. Attorney with experience in ethics regulation, research, legal writing, law enforcement or civil code enforcement, municipal or local government law. Related advanced degrees may substitute for education and/or experience.

Selection Process: Employment Application information is subject to State of Florida Public Records, Chapter 119 laws/exemptions (view statute [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0100-0199/0119/0119.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0119/0119.html) ). Applicants must complete a Palm Beach County Board of County Commissioners Employment Application (apply at [www.pbcgov.jobs](http://www.pbcgov.jobs)) and Professional Conduct Questionnaire (click here <http://pbc/hris/asps/help/Professional%20Conduct%20Questionnaire.pdf>), and any Veteran's Preference/related materials, that must be



received by 5:00 p.m. on 10/9/2015, by the Palm Beach County Human Resources Department, 100 Australian Avenue, Suite 300, West Palm Beach, FL 33406. ***The Commission on Ethics, composed of a former law enforcement official with experience investigating white collar crime or public corruption, an attorney with experience in ethics regulation, an ethics educator, a certified public accountant and a former elected official, will be solely responsible for selecting the Executive Director.*** Employment Application review, background investigations, and personal and professional referrals will be conducted. Following formal interview by the COE, the Commission on Ethics will set the Executive Director's salary, subject to approval by the Board of County Commissioners. PBC Human Resources Department: Info 561-616-6888 Fax 561-616-6893 (No e-mail applications/resumes accepted). Applications must include Job ID number, and will be accepted no later than 5:00 p.m. on 10/9/2015.

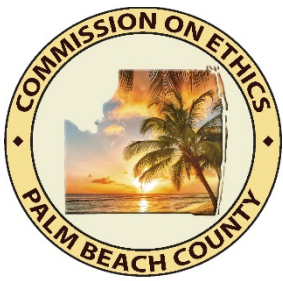
Benefits: The Palm Beach County Board of County Commissioners provides an excellent benefits package, including a salary competitive for the South Florida marketplace, travel reimbursement for interviews, relocation reimbursement assistance per PBC County-Wide Policy CW-F-012, medical, dental and life insurance, as well as vacation and sick leave, tuition reimbursement and participation in the Florida Retirement System.

Visit [www.palmbeachcountyethics.com](http://www.palmbeachcountyethics.com) for detailed information on the Commission on Ethics, Palm Beach County, Florida

EO/AA M/F/D/V, Drug Free Work Place

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In accordance with Affirmative Action requirements of Sec. 503 of the Rehabilitation Act of 1973, as amended, and provisions of the Americans with Disabilities Act of 1990, the County provides reasonable accommodation. If you need a reasonable accommodation for interviewing or initial employment, please notify the Palm Beach County BCC Human Resources Department. EO/AA Employer M/F/D/V; (DFWP)



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

August 5, 2021

Mr. Brad Gomberg  
345 Tequesta Drive  
Tequesta, FL 33469-0273

Re: RQO 21-012  
Outside employment

Dear Mr. Gomberg,

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:**

As the owner of an outside business, does the part-time outside employment waiver in Section 2-443(e)(5) of the Palm Beach County Code of Ethics (Code) apply to you and what other provisions of the Code could be implicated by you operating an outside business?

### **FACTS:**

You are a full-time employee of the village of Tequesta (Village), serving as the Director of Information Technology. The Village Human Resources department just distributed the COE's Employee Conflict of Interest Waiver to complete for those with part-time outside employment with a vendor of the Village. You would like an opinion on your situation. You have a small side business as an IT consultant that you operate in your private capacity during non-work hours with the Village. One of your clients is a vendor for the Village Planning and Zoning Department. You are employed by the vendor as an independent contractor. You want to ensure that this employment is allowed and that you do not violate the Code.

### **ANSWER:**

Section 2-443(d), *Prohibited contractual relationships*, prohibits you and your outside businesses from entering into a contract or other transaction for goods or services, directly or indirectly, with your public employer (the Village), unless an exception applies. As long as your outside IT consulting business does not enter into any contract or other transaction for goods or services with the Village, the Code does not prohibit you from operating this business outside of your municipal business hours.

Additionally, the COE has previously held that Section 2-443(d) of the Code also prohibits you from entering into any contractual relationships with a vendor of your public employer if you would be providing good or services to your public employer through that contract.<sup>1</sup> This would create an indirect contract between you and your public employer and, thus, violate Section 2-443(d) of the Code. Section 2-443(e)(5), *Exceptions and waiver*, provides a process by which such a contractual relationship prohibition may be waived for public employees. This outside employment waiver process applies when a public employee's outside employer has a contract for goods or services with his or her public employer. The Code defines an "outside employer" as any entity of which the public employee is an employee.<sup>2</sup> However, persons employed on a contractual basis are classified as independent contractors and are not considered "employees" under the Code.<sup>3</sup>

Based on the facts provided, you would be working as an independent contractor, not as an employee, of the Village vendor. Since an independent contractor is not considered an employee, the Village vendor would not be considered your outside employer. Because the vendor is not your outside employer, the part-time outside employment waiver provision cannot be used in your situation. Therefore, the contractual relationship prohibition would preclude you from working as an independent contractor for this vendor if you would be providing goods or services to the Village through that contract.

<sup>1</sup> RQO 10-038, RQO 16-001, RQO 16-006, RQO 19-019

<sup>2</sup> §2-442, Definitions.

<sup>3</sup> RQO 11-020

Further, you have an ongoing responsibility to refrain from using your official position as a Village employee in any way to give a special financial benefit for yourself or your outside business.<sup>4</sup> Thus, you are prohibited from soliciting business during your municipal work hours and from identifying yourself as a Village employee, including providing any written or verbal communication using your municipal title or position, to attempt to obtain a customer. You are also prohibited from using your official position with the Village in any way, including influencing others to take some action, to give a special financial benefit to a customer or client of your outside business.<sup>5</sup>

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-442, §2-443(a), §2-443(d), and §2-443(e)(5) of the Code:

**Sec. 2-443. 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 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:

- (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;

(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. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public.

(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

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<sup>4</sup> §2-443(a)

<sup>5</sup> Id.

- 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. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment.

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



# 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

*Honesty - Integrity - Character*

August 13, 2021

Mr. Ramsay Stevens, EUAB Member  
City of Lake Worth Beach  
7 North Dixie Highway  
Lake Worth Beach FL, 33460

Re: RQO 21-013  
Misuse of Office/Outside employment

Dear Mr. Stevens,

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 you violate the Palm Beach County Code of Ethics (Code) if you, as an advisory board member for the city of Lake Worth Beach, recommend to the City Commission that they score bidders with project labor agreements more favorably when in your private capacity, you work as a consultant for local chapters of a national electrical industry trade association and labor union located in Nevada and California?

### **FACTS:**

You are a member of the Lake Worth Beach Electric Utility Advisory Board. In your private capacity, you are a consultant for the local Nevada and California Chapters of the National Electrical Contractors Association (NECA) and the International Brotherhood of Electrical Workers (IBEW) through a separate entity, the California-Nevada Labor Management Cooperation Committee of NECA and the IBEW (LMCC). NECA and IBEW have chapters across the country, and each local chapter has autonomy to elect officers, determine priorities, and work together to negotiate labor agreements. You work as an independent contractor and are paid for your services by LMCC. LMCC is funded by the local Nevada and California Chapters of NECA and IBEW. The LMCC has its own board of directors, which is largely comprised of the local Nevada and California NECA and IBEW chapter managers, but it also has other members that are not NECA-IBEW staff. In the previous 24 months, you have provided more than \$10,000 in goods and services to LMCC. You do not have any contracts and have not provided services to any local Florida chapters of NECA and IBEW.

As an advisory board member, you would like to make recommendations to the City Commission regarding Lake Worth Beach Electric Utilities Department pursuing a community solar program through a competitive bidding process, which you believe will bring the utility in line with its "competitors" and peers that offer such programs. As part of that recommendation, you would like to propose that the city score potential bidders with project labor agreements more favorably as you believe that developers that use a skilled and trained workforce do a better job. You have also been asked by one of the commissioners to weigh in on options for the city to utilize project labor agreements more broadly, specifically for conventional real estate development.

### **ANSWER:**

As an advisory board member, you are considered an official under the Code.<sup>1</sup> The Code prohibits officials from using their official positions in any way, including influencing others to take some action, to give a special financial benefit to specified persons or entities. Among those specified persons or entities is a customer or client of their outside business. The Code

<sup>1</sup> §2-442, Definitions.

defines a customer or clients as any person or entity to which an official's outside business has supplied over \$10,000 in goods or services during the previous 24 months.<sup>2</sup> Based on the facts provided, because you have provided over \$10,000 in goods and services to LMCC, under the Code, LMCC is a customer or client of your outside business. As such, you are prohibited from using your official position as a member of the Lake Worth Beach Electric Utility Advisory Board to give a special financial benefit to LMCC.

Further, under the facts provided, because you do not provide any goods or services to the local Florida chapters of NECA or IBEW, then they are not customers or clients of your outside business. Thus, it would not be a violation of the misuse of official position of the Code if you recommended the City Commission score potential bidders who use project labor agreements involving the local Florida chapter of NECA or IBEW more favorably. Because the local Florida chapters of NECA and IBEW are not your customers or clients, your recommendation to the City Council would not result in a special financial benefit being given to a prohibited person or entity.

While your customer or client, LMCC, is funded by the Nevada and California chapters of NECA and IBEW, which are independent from the Florida NECA and IBEW chapters, they do share a common national organization in name. This could lead to an "appearance of impropriety" based on your recommendation as proposed. While you are under no legal obligation to do so, to help to avoid any potential issue in this regard, we suggest that you disclose this relationship and highlight the autonomy of each organization prior to offering your recommendation to your board.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-442 and §2-443(a) 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).

**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.

**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:
- (5) A customer or client of 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 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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<sup>2</sup> Id.