

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

December 2, 2021 – 1:30 p.m.

Governmental Center,

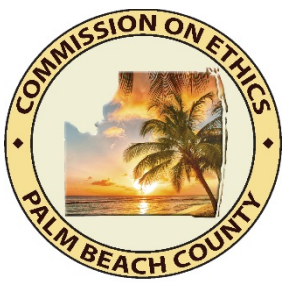
301 North Olive Avenue, 6th Floor

Commissioners Chambers

Meeting will begin at 1:30pm
Executive Session will begin at 1:35pm
Regular Agenda will resume at 2:00pm

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Executive Session – C20-004
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 21-016
 - b. RQO 21-017
 - c. RQO 21-018
- VI. Items Pulled from Consent Agenda
 - a.
- 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.



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Executive Director

Mark E. Bannon

November 17, 2021

Mr. Bruce Guyton
Palm Tran
3201 Electronics Way
West Palm Beach, FL 33407

Re: RQO 21-016
Charitable Solicitation/Misuse of Office

Dear Mr. Guyton,

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 a Palm Beach County employee, does the Palm Beach County Code of Ethics (Code) prohibit you from accepting a donation from a county vendor for a non-profit organization of which you are an officer or director?

FACTS:

You are a Palm Beach County employee, serving as the Senior Transit Planner for Palm Tran. You are also the president of the Conference of Minority Transportation Officials (COMTO), which is a not-for-profit nationwide transportation organization with a strong focus on advocating for women and minorities advancing in all industries. COMTO does not have any contractual relationships with the county, but certain county employees and county vendors are members of COMTO.

COMTO is one of the premier advocacy and networking organizations in the transportation industry. COMTO has local chapters throughout the United States and one chapter in Toronto, Canada. Every year, the chapters compete in various categories and those who excel in their category are recognized with a COMTO National Award at the annual Industry Awards Ceremony. Competition is fierce, and many chapters have been competing 30 and 40 years. When a chapter, or a member of a chapter, wins an award, it is a huge accomplishment.

The Palm Beach County COMTO chapter was founded in 2017 and immediately worked hard to serve the local community, including but not limited, providing hygiene items to the homeless, collecting toys for foster kids during the holidays, contributing to back-to-school drives, and joining forces with the United Way to feed the hungry during the holidays and recognizing community leaders at a big awards event. In recognition of the Palm Beach County COMTO chapter's hard work, it was awarded the 2019 COMTO National Community Engagement Award. In addition, Palm Tran was recently awarded the 2020 COMTO National Agency of the Year award, and Clinton Forbes (Palm Tran's Executive Director) was awarded the 2020 COMTO National Corporate Executive of the Year award.

The Palm Beach County COMTO chapter has decided to host an event to celebrate the three COMTO awards. A COMTO member, who is also a county vendor, asked (without solicitation) to sponsor this event.

ANSWER:

Public employees and officials are prohibited from using their official position to give a special financial benefit, not shared with similarly situated members of the general public, to specified persons or entities, including to an organ-

ization of which they are an officer or director.¹ As a county employee, you are prohibited from using your official position as the Senior Transit Planner to give a special financial benefit to Palm Beach County COMTO chapter, a non-profit organization of which you are an officer or director.

In addition, Section 2-444(a)(1) of the Code specifically prohibits you from soliciting or accepting a gift valued at over \$100 from any vendor of the county or any lobbyist or principal or employer of a lobbyist who lobbies the county. However, the Code has an exception for solicitations or donations on behalf of non-profit charitable organizations. Section 2-444(h), *Solicitation of contributions on behalf of a non-profit charitable organization*, permits you to solicit and accept funds for a non-profit charitable organization from a county vendor or a lobbyist or principal or employer of a lobbyist who lobbies the county provided there is no quid pro quo or other special consideration given. In addition, a record of any solicitations or any donations from any county vendor or a lobbyist or principal or employer of a lobbyist who lobbies the county must be maintained and submitted to the COE within 30 days of the event or if not solicited or donated for an event, then within 30 days of the solicitation or donation.² Based on the facts provided, you will need to submit a charitable solicitation log (which can be found on our website: www.palmbeachcountyethics.com/pdf/Forms/Solicitation%20Log.pdf), listing the county vendor, the event, and the amount donated for the Palm Beach County COMTO event since a county vendor has donated funds to sponsor the event. The charitable solicitation log must be submit to the COE within 30 days of the event.

Further, although the Code does not prohibit you from soliciting and accepting donations on behalf of Palm Beach County COMTO because it is a non-profit charitable organization, your participation in fundraising for Palm Beach County COMTO needs to be in your personal name only without any reference to your official title or connection to your official position as an employee of Palm Tran or the county. Lending your name and official title as a Palm Tran or county employee to the Palm Beach County COMTO fundraising effort would per se constitute using your official position to provide a special financial benefit to that organization.³ This applies directly to you and to anyone indirectly soliciting on your behalf.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a), §2-444(a)(1), and §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 organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

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.
- (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,

¹ §2-443(a)(1-7), *Misuse of public office or employment*

² §2-444(h)(2), *Solicitation of contributions on behalf of a non-profit charitable organization.*

³ RQO 12-081

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.
- (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions described in this subsection.

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. This opinion is not applicable to any conflict under state law, or with any relevant provision within the rules of The Florida Bar. Inquiries regarding possible conflicts under state law or bar rules should be directed to the State of Florida Commission on Ethics or The Florida Bar.

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, appearing to read 'M E B', with a large, sweeping flourish extending to the right.

Mark E. Bannon,
Executive Director

CEK/gal



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Executive Director

Mark E. Bannon

November 22, 2021

Mr. Austin Lee, Public Information Officer
City of Greenacres
5800 Melaleuca Lane
Greenacres, FL 33463

Re: RQO 21-017
Conflict of Interest/Gift law

Dear Mr. Lee,

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 from writing a social media post about a city of Greenacres employee who donated a Little Free Library to the city?

FACTS:

You are the Public Information Officer for the city of Greenacres. Monica Powery, Director of Purchasing for the city, built, painted, and donated a Little Free Library (LFL). Ms. Powery is also a children's book author. The LFL is a free book-sharing box where anyone may take a book or share a book. You write social media posts about the LFLs that are donated. You typically include the business or donor who has contributed for the LFL. The Director of Purchasing did not ask to have a post written about her donation. The Director of Community and Recreation Services, who oversees the LFL program, would like to recognize her donation. You would like to write a post that includes the Director of Purchasing's name and the title of her children's book, i.e., "This library was donated, built, and painted by our very own Purchasing Director and children's book author, Monica Powery. The design of this library correlates with the illustrations of Monica's book, *Nose to Nose*."

ANSWER:

Section 2-444(e) of the Code prohibits any quid pro quo or other special consideration being given to the donor of a gift in exchange for the gift. In addition, Section 2-443(b) of the Code prohibits you from using your position as the Public Information Officer to corruptly secure a special benefit for another person. The Code defines "corruptly" as an action that is done with a wrongful intent and is inconsistent with the proper performance of one's public duties.¹

Based on the facts provided, Ms. Powery did not ask you to write a post about her donation; the Director of Community and Recreation asked you to write it. You stated that, as the Public Information Officer, you often post about the business or person who donated a LFL. Because (1) you will be treating Ms. Powery the same as every other donor of a LFL, (2) her donation was not given as quid pro quo in exchange for

¹ §2-443(b), Corrupt misuse of official position.

promoting her book, and (3) you are writing the post as a part of your normal duties as the Public Information Officer, you would not violate Section 2-444(e) or Section 2-443(b) by writing the post about her donation.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(b) and §2-444(e) of the Code:

Sec. 2-443. Prohibited conduct.

(b) ***Corrupt misuse of official position.*** An official or employee shall not use or attempt to 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.

Sec. 2-444. Gift law.

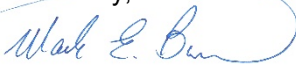
(e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (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.

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. This opinion is not applicable to any conflict under state law, or with any relevant provision within the rules of The Florida Bar. Inquiries regarding possible conflicts under state law or bar rules should be directed to the State of Florida Commission on Ethics or The Florida Bar.

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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Executive Director

Mark E. Bannon

November 22, 2021

Mr. Michael Gregory, Chief of Police
City of Boynton Beach
2100 High Ridge Road
Boynton Beach, FL 33426

Re: RQO 21-018
Conflict of Office/Fundraising

Dear Chief Gregory,

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 the Palm Beach County Code of Ethics (Code) prohibit you as a city of Boynton Beach employee from serving on the board of directors of a non-profit organization that operates in Palm Beach County and builds homes in your municipality?

FACTS:

You are an employee of the city of Boynton Beach, serving as the Police Chief for the city's police department. You have been asked to serve on the board of directors for Habitat for Humanity (HFH), a 501(c)(3) organization that also operates in Palm Beach County and builds homes in the city. As a city employee, you will not be involved in any City Commission-related approvals or denials of HFH projects or any contractual or other agreements between the city and HFH.

ANSWER:

Since you will not be involved in any City Commission-related approvals or denials of HFH projects or contractual relationships between the city and HFH, it is unlikely you would be able to take any actions that would violate the Code, with one main exception. The Code prohibits public employees and officials from using their official position in any manner to give a special financial benefit to specified persons or entities, including to an organization of which they are an officer or director.¹ Therefore, you may not use your official position as the Police Chief in any way to give a special financial benefit to HFH or to any of the other prohibited persons or entities listed in §2-443(a)(1-7). For example, if you participate in any fundraising on behalf of HFH, it needs to be in your personal name only without any reference to your official title or connection to your official position as the Police Chief for the city of Boynton Beach. Lending your name and official title as the Police Chief to any fundraising effort for HFH would per se constitute using your official position to provide a special financial benefit to that organization. This applies directly to you and to anyone indirectly soliciting on your behalf.

Also, please be aware that should the need arise for HFH to enter into any kind of law enforcement contract with the city's Police Department (i.e., security, traffic control for an event, etc.), HFH must find another agency for these tasks. As the Police Chief, you would not be able to approve such a contract as a board member of HFH, and your subordinates would also not be able to act for the department. As the Police Chief, all authority flows through you, which prohibits your subordinates from acting on your behalf in such an instance.

¹ 2-443(a)(7)

LEGAL BASIS:

The legal basis for this opinion is found in the §2-443(a)(7) 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 organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

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