

Honesty - Integrity - Character

Palm Beach County

Commission on Ethics

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Commissioners

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General Counsel

Vacant

Investigator

Abigail Irizarry

Investigator

Mark A. Higgs

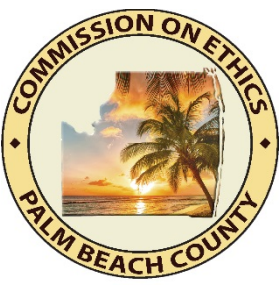
Agenda

January 6, 2022 – 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. 2021 Annual Report Presentation
- V. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 21-019
 - b. RQO 21-021
- 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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Mark E. Bannon

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December 10, 2021

Ms. Deanna Cocca
Human Resources Department
100 Australian Ave. #300
West Palm Beach, FL 33408

Re: RQO 21-019
Outside Employment

Dear Ms. Cocca,

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 a conflict of interest exist for you as a Palm Beach County employee when the owner of the company you work for in your private capacity becomes a vendor of the county through a different company that he owns?

FACTS:

You are a Palm Beach County employee, serving as Human Resource Specialist IV. In your private capacity, you also work as an independent contractor for Sterling International, which is owned by Alaa El-Halwagy and is contractually bound to operate outside the United States. Mr. El-Halwagy also owns another business, Innovative Group T & D, Inc. (Innovative Group). Innovative Group was recently selected to conduct trainings for the county and will be a county vendor. Innovative Group and Sterling International are separate and independent entities. Mr. El-Halwagy is the sole proprietor of both businesses.

ANSWER:

In general, the Palm Beach County Code of Ethics (Code) prohibits you from entering into any contracts or transactions for goods or services, directly or indirectly, with the county, unless an exception applies.¹ This prohibition includes any contract or transaction between the county and you, your outside employer, or your outside business. The Code defines an "outside employer" as any entity of which the public employee is an employee.² However, persons employed as independent contractors are not considered "employees" as defined by the Code.³ 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 the county if you would be providing good or services to the county through that contract.⁴ This would create an indirect contract between you and your public employer and, thus, violate Section 2-443(d) of the Code.

Under the facts provided, Innovative Group and Sterling International are separate entities, and you are only working as an independent contractor for Sterling International. As an independent contractor, you are not an employee of Sterling International so Sterling International is not considered your outside employer.

¹ §2-443(d), *Contractual relationships*

² §2-442, *Definitions*

³ RQO11-020; RQO 16-022

⁴ RQO 10-038, RQO 16-001, RQO 16-006, RQO 19-019

Additionally, Sterling International does not have any contracts or transactions for goods or services with the county; Innovative Group is the entity that is entering into the contract or transaction with the county. As long as you do not enter into any contractual relationships with Innovative Group to provide any goods or services to the county through that contract, a prohibited conflict of interest will not exist for you. However, since both entities are owned by the same sole proprietor, you must also take care that Sterling International does not have you conducting any business or doing any work on behalf of Innovative Group, especially where you would be indirectly providing any goods or services to the county.

Further, you are reminded that the Code prohibits you from using your official position with the county to give or influence others to give a special financial benefit to specified persons or entities, including to a customer or client.⁵ The Code defines customer or client as any person or entity that you have supplied over \$10,000 in goods or services to during the previous 24 months.⁶ If you have met the \$10,000 threshold over the previous 24 months for your work with Sterling International, then Sterling International would be considered your customer or client, and you would be prohibited from using your official position with the county in any way to give a special financial benefit to Sterling International.

LEGAL BASIS:

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

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 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.

⁵ §2-443(a), Misuse of public office or employment

⁶ §2-442, Definitions

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.

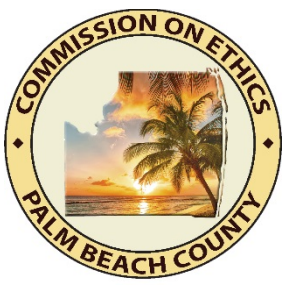
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

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



Honesty - Integrity - Character

Palm Beach County Commission on Ethics

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Rodney G. Romano

Executive Director

Mark E. Bannon

December 21, 2021

Mr. Perry DonFrancisco
Delray Citizens for Delray Police
1045 E. Atlantic Ave. #300
Delray Beach, FL 33483

Re: RQO 20-021
Gift law

Dear Mr. Perry,

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:

Are employees of the city of Delray Beach Police Department prohibited by the Palm Beach County Code of Ethics (Code) from accepting prizes from a nonprofit organization for participating in a volleyball tournament?

BRIEF ANSWER:

The Code does not prohibit the employees from attending the tournament and accepting the prizes as long as the nonprofit organization is not a vendor for the city, is not a lobbyist or principal or employer of a lobbyist that lobbies the city, and as long as there is no "quid pro quo" or special privilege or treatment given to the nonprofit organization by the employees or the city based on the hosting of this event. The attendance and prizes may be reportable gifts.

FACTS:

You are the President of Delray Citizens for Delray Police (DCDP), a 501(c)(3) charitable organization that has been supporting the Delray Beach Police Department and the community they serve since 1988. DCDP will be hosting a volleyball tournament on January 22, 2022 as a "fun-filled" appreciation event for members of the police department.

At the volleyball tournament, six to eight teams consisting of six players per team will be competing. The teams will be chosen through a draft by members of the Delray Beach Police Department's command staff. There will be between 36 (6 players on 6 teams) and 48 (6 players on 8 teams) members competing. The competition will be a round robin style tournament with the winning teams advancing to the final championship match.

Each member of the first place winning team will be awarded with a one night stay for two at a local hotel in Delray Beach, dinner for two at a local Delray Beach restaurant (food only, alcohol, tax and gratuity are not included), and an equipment voucher to purchase work boots. The second place team will each be awarded a one night stay for two at a local Delray Beach hotel. The remaining competing player's will not receive awards. DCDP will host a cookout at the end of the tournament.

ANSWER:

In general, you would not be entitled to an advisory opinion because you are not under the jurisdiction of the 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. However, since the gift from the DCDP will impact the employees who receive it, there is no way to determine which employees will receive these gifts prior to the tournament, and you are seeking an opinion proactively to ensure they avoid any potential issues, the COE will make an exception and provide an opinion.

The Code defines a gift as anything of value without adequate and lawful consideration.¹ Section 2-444(a)(1) of the Code prohibits public employees from soliciting or accepting any gifts with a value of greater than \$100, in the aggregate for the calendar year, from a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, sells, or leases to their government employer. The Code also prohibits public employees from accepting a gift of any value as quid pro quo for any official action, duty performed, or duty violated.²

In previous advisory opinions, the COE has identified several key factors in determining whether a gift may be accepted. Those key factors include whether the gift was general in nature and given to recognize a large class of public employees, whether the gift was meant as a tip, thank-you, or compensation for a specific act by one or more employees, and whether the gift was given by a vendor, lobbyist, principal or employer of a lobbyist who lobbies the employee's public employer. For example, the COE has previously opined that lunch and complimentary use of golf and tennis facilities as an expression of appreciation for the work of municipal public safety employees did not violate §2-444(e) where the donor country club was not a municipal vendor, lobbyist, or principal or employer of a lobbyist.³

Based on the facts provided, the food and beverage at the cookout and the prizes awarded after the volleyball tournament would be considered gifts to the police department employees. Therefore, as long as DCDP is not a city vendor or a lobbyist or principal or employer of a lobbyist of the city and there is no "quid pro quo" or special treatment or privileges given to DCDP in exchange for hosting this event by any public employee or official of the city, the Code does not prohibit the police department employees from accepting the food and beverages or any prizes.

Although the employees will not be prohibited from accepting any food, beverages, or prizes at the event, it may constitute a reportable gift under the Code. If the value of the food and beverage or the prize to an employee is greater than \$100, then it must be reported as required by the Code.⁴ In determining the value of a gift, the Code defers to Florida Codes and statutes.⁵ For example, for the value of food and beverages, Florida law provides that the value of a gift provided to several individuals may be calculated on a pro rata basis among all of the invited individuals.⁶ Therefore, if the value of any gift accepted by a police department employee from DCDP exceeds \$100, then the gift must be reported on a gift form.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442, §2-444(a)(1), §2-444(e), and §2-444(f) of the Code:

Sec. 2-442. Definitions.

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 of these, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

¹ §2-444(g)

² §2-444(e)

³ RQO 11-007

⁴ §2-444(f)(1),(2)

⁵ §2-444(g); §112.3148, Florida Statutes; §34-13.310, Florida Administrative Code; RQO 11-022

⁶ §112.3148(7)0, Florida Statutes

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.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (1) Gift reports for officials and employees identified by state law as reporting individuals. Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended, including, but not limited to, the state's definition of gift, exceptions thereto, and gift valuations. The county code of ethics' definition of gift and exceptions thereto shall not be used by reporting individuals to complete and file state gift reporting disclosures. When a state reporting individual files or is required to file a gift report with the state, a copy of each report shall also be filed with the county commission on ethics no later than ten (10) days after the report is filed with the state. Failure to file a State of Florida Quarterly Gift Disclosure Form with the county commission on ethics within the required timeframe shall be a violation of this section.
 - (2) All other officials and employees who are not reporting individuals under state law.
 - b. All other gifts. All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than January 31 of each year for the previous calendar year (January 1 through December 31). All officials or employees, who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law. The county code of ethics' definition of gift and exceptions thereto shall be used by non-state-reporting individuals in completing and filing annual gift disclosure reports required by this section.

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