

Honesty - Integrity - Character

Palm Beach County
Commission on Ethics
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Commissioners
Rodney G. Romano
Michael H. Kugler
Peter L. Cruise
Carol E. A. DeGraffenreidt
Vacant

Executive Director
Christie E. Kelley

Intake and Compliance Manager
Gina A. Levesque

General Counsel
Vacant

Investigator
Mark A. Higgs

Investigator
Abigail Irizarry

Second Amended Agenda

April 7, 2022 – 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 1:40pm
Regular Agenda will resume
immediately following Executive Session

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from February 3, 2022
- V. Approval of Minutes from March 10, 2022.
- VI. Executive Session
 - a. C22-002
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 22-004
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. 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**

FEBRUARY 3, 2022

**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:

Christie E. Kelley Esq., Commission on Ethics (COE) Executive Director
Mark A. Higgs, COE Investigator II
Abigail Irizarry, COE Investigator II
Gina A. Levesque, COE Intake and Compliance Manager

ADMINISTRATIVE STAFF:

Danielle Freeman, Deputy Clerk, Clerk of the Circuit Court & Comptroller's Office

III. INTRODUCTORY REMARKS – None

**IV. APPROVAL OF MINUTES FROM NOVEMBER 4, 2021, DECEMBER 2, 2021,
AND JANUARY 6, 2022.**

a. MOTION to approve the November 4, 2021 minutes. Motion by Michael Kugler, seconded by Rodney Romano, and carried 5-0.

b. MOTION to approve the December 2, 2021 minutes. Motion by Michael Kugler, seconded by Rodney Romano, and carried 5-0.

c. MOTION to approve the January 6, 2022 minutes. Motion by Michael Kugler, seconded by Rodney Romano, and carried 5-0.

V. STRATEGIC PLAN

Christie Kelley provided a PowerPoint presentation on the strategic plan as outlined in the slides. The COE's mission over the next 5 years included:

- Goals and strategies;
- Achievements and commendations; and
- Improvements that could be implemented overall.

Discussion ensued regarding resources to implement the strategic plan, hire an outreach specialist for community events, social media consultant, and updates on the general counsel position.

VI. DISCUSSION ON AMENDING COMMISSION ON ETHICS ORDINANCE REGARDING FICPA AS APPOINTING ENTITY

Ms. Kelley stated that the Florida Institute of Certified Personal Accountant's (FICPA) that appointed Vice Chair Kridel was no longer an active organization, and a new entity would need to be appointed. She added the following:

- Staff continued to research similar entities that have a finance, accounting, or auditing background that could replace the FICPA. The two entities being considered, were:
 - The Palm Beach Chapter of Association of Certified Fraud Examiners (ACFE); and
 - The Palm Beach Chapter of the Florida Government Finance Officers Association (FGFOA)
- She spoke with the president of the ACFE and the organization was interested in serving as an appointing entity. However, she was in the process of meeting with a representative from FGFOA.
- The COE was asked to submit potential entity suggestions to Ms. Kelley by next week.
- A recommendation for an appointing entity would be submitted next month.
- Vice Chair Kridel's position would remain vacant for a couple of months until a new appointing entity was selected.

- A new review committee needed to be established, and the COE would provide 3 names to the BCC.
- Two previous appointees were interested in serving on the review committee again.

Responding to a question from the COE, Ms. Kelley said she spoke with the County Attorney's office and there were no provisions in place to extend the Vice Chair Kugler's time.

Commissioner DeGraffenreidt announced that she had accepted a new position in Jacksonville, Florida. She added that she was not certain if she had to be a Palm Beach County resident to continue serving on the board, but if it was possible, she would commit to coming to the meetings once a month.

Ms. Kelley stated that there wouldn't be any quorum issues if every member was in attendance.

MOTION to re-recommend Andrea McMillan and David Baker to the review committee. Motion made by Michael Kugler, seconded by Rodney Romano, and carried 5-0.

Commissioner Romano asked if a deadline could be implemented for establishing the review committee due to recent developments.

Commissioner DeGraffenreidt provided background on why she accepted the new job in Jacksonville, FL, and her commitment to the COE.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

- a. **RQO 22-001**
- b. **RQO 22-002**

MOTION to approve the consent agenda. Motion made by Rodney Romano, seconded by Carol DeGraffenreidt.

Discussion ensued between Commissioner Kugler and Ms. Kelley regarding the conflict of interest outlined in the processed advisory opinion RQO 22-002, with the outcome being Mr. Dowdell resigned from his position on the McCurdy Senior Housing Board.

UPON CALL FOR A VOTE, the motion carried 5-0.

(CLERK'S NOTE: Chair Cruise inadvertently said Commissioner Rodney Romano seconded the motion instead of Commissioner DeGraffenreidt.)

VIII. ITEMS PULLED FROM CONSENT – None

IX. EXECUTIVE DIRECTOR COMMENTS- None

X. COMMISSIONER COMMENTS

A.

DISCUSSED: Committee Sentiments.

Chair Cruise and Commissioners Kugler, Romano, and DeGraffenreidt expressed their fond sentiments working with Vice Chair Kridel and hoped he could continue serving on the COE.

B.

DISCUSSED: Commendation.

Chair Cruise, Vice Chair Kridel and Commissioners Kugler, Romano, and DeGraffenreidt praised Ms. Kelley on the well written and user-friendly strategic plan.

C.

DISCUSSED: Expression of Gratitude.

Vice Chair Kridel expressed his gratitude to the staff of the commission for all their efforts. He added that he would be watching future meetings.

D.

DISCUSSED: Well Wishes.

Commissioner Romano conveyed his well wishes to Commissioner DeGraffenreidt on her new position and efforts to move closer to her sibling. He added that he hoped she could continue serving on the COE.

E.

DISCUSSED: 2022 Regional High School Ethics Bowl.

Chair Cruise thanked everyone in advance for their participation in the upcoming 2022 Regional High School Ethics Bowl at Florida Atlantic University on Saturday morning.

XI. PUBLIC COMMENTS

A.

DISCUSSED: Committee Sentiments.

Richard Radcliffe, Executive Director of the Palm Beach County League of Cities, said he would miss working with Commissioner DeGraffenreidt and Vice Chair Kridel if they were no longer able to serve on the COE.

B.

DISCUSSED: Committee Sentiments.

John Carey, Inspector General, said he would miss working with Commissioner DeGraffenreidt and Vice Chair Kridel if they were no longer able to serve on the COE.

C.

DISCUSSED: COE History.

Mr. Radcliffe provided some background on his time with the COE.

D.

DISCUSSED: Commendation.

Mr. Radcliffe and Mr. Carey commended Ms. Kelley on a well written strategic plan.

Chair Cruise congratulated Mr. Carey on the renewal of his term as Inspector General.

Chair Cruise asked if there would be a delay swearing in the re-appointing members.

Ms. Kelley confirmed that the swearing in for the reappointing members would take place next month without delay.

XII. ADJOURNMENT

At 2:07 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
PALM BEACH COUNTY, FLORIDA**

MARCH 10, 2022

**THURSDAY
1:37 P.M.**

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

I. CALL TO ORDER – Performed by Christie E. Kelley Esq., Commission on Ethics (COE) Executive Director

II. INTRODUCTORY REMARKS

(CLERK’S NOTE: Roll Call what taken at this time)

IV. ROLL CALL

MEMBERS:

Peter L. Cruise, Chair
Carol E. A. DeGraffenreidt – Via Teleconference
Michael H. Kugler
Rodney G. Romano

STAFF:

Christie E. Kelley Esq., Commission on Ethics (COE) Executive Director
Mark A. Higgs, COE Investigator II
Abigail Irizarry, COE Investigator II
Gina A. Levesque, COE Intake and Compliance Manager

ADMINISTRATIVE STAFF:

Danielle Freeman, Deputy Clerk, Clerk of the Circuit Court & Comptroller’s Office

(CLERK’S NOTE: Agenda order was restored at this time.)

III. SWEARING IN CEREMONY BY JUDGE SARAH L. SHULLMAN-

- a. Rodney G. Romano-Appointed by the Palm Beach County League of Cities
- b. Peter L. Cruise-Appointed by the president of FAU

V. NOMINATION AND ELECTION OF NEW CHAIRPERSON (TO BEGIN PRESIDING OVER MEETING IMMEDIATELY UPON ELECTION)

Ms. Kelley provided an overview of the process for nominating and voting for a commissioners to serve as Chair and Vice Chair.

Commissioner Cruise nominated Commissioner Rodney Romano.

No other nominations made. Ms. Kelley closed nominations for Chair.

VOTE to elect Commissioner Rodney Romano as Commission Chairperson carried 4-0.

VI. NOMINATION AND ELECTION OF VICE CHAIR

Commissioner Cruise nominated Commission Michael Kugler for Vice Chair.

No other nominations made. Ms. Kelley closed nominations for Vice Chair.

VOTE to elect Commissioner Michael Kugler as Vice Chair carried 4-0.

VII. EXECUTIVE SESSION A. C22-002- CANCELLED

MOTION to approve the October 18, 2021 Special Meeting minutes. Motion made by Commissioner Cruise, seconded by Michael Kugler and carried 4-0.

VIII. ITEMS PULLED FROM CONSENT – None

IX. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

a. RQO 22-003

MOTION to approve the consent agenda. Motion made by Commissioner Cruise, seconded by Carol DeGraffenreidt and carried 4-0.

X. ITEMS PULLED FROM CONSENT AGENDA – none

XI. DISCUSSION RE: COMMISSION ON ETHICS ORDINANCE CHANGE

Discussion ensued regarding which organizations that expressed interest would be chosen as entities entrusted to nominate commission appointments, if one or both could be chosen, and if both were chosen how the rotation would be assigned.

MOTION to approve the recommend both organizations serve on a 4-year rotating basis. Motion made by Michael Kugler, seconded by Peter Cruise and carried 4-0.

XII. EXECUTIVE DIRECTOR COMMENTS

Ms. Kelley stated that the BCC appointed two individuals for the Commission on Ethics Ordinance Draft Review Committee, and that the League of Cities would meet and agree to the language contained within the ordinance. Additionally, she stated that seven interviews for Commission on Ethics General Counsel would be conducted the following week.

XIV. PUBLIC COMMENTS

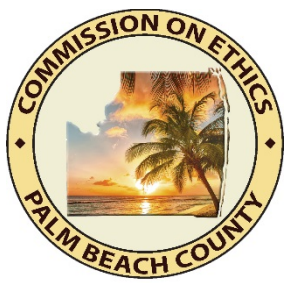
Richard Radcliffe congratulated the commissioners, Chair and Vice Chair on their new terms.

XV. ADJOURNMENT

At 1:54 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Commissioners

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Carol E.A. DeGraffenreidt
Peter L. Cruise
Vacant

Executive Director

Christie E. Kelley

Honesty - Integrity - Character

April 1, 2022

Mr. William P. Feldkamp
Lake Worth Beach Historic Resources Preservation Board
7 North Dixie Highway
Lake Worth Beach FL, 33460

Re: RQO 22-004
Voting conflict

Dear Mr. Feldkamp,

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 participating in discussions or voting on matters before the Lake Worth Beach Historic Resources Preservation Board (HRPB) regarding the renovation and new construction at the Gulfstream Hotel?

BRIEF ANSWER:

You are not prohibited from participating in discussions or voting on these matters because the size of the class affected by this project is large enough.

FACTS:

You are a member and current Chair of the HRPB. The HRPB's function is to consider historic preservation issues. Issues regarding the renovation and new construction at the landmarked Gulfstream Hotel will be coming before the HRPB. You have no financial or other ties to the developer or anyone else involved with the project. However, you live within 400 feet of the Gulfstream Hotel. You own one unit in a condominium diagonally across the street from the Gulfstream Hotel. A search by COE staff using the Palm Beach County Property Appraiser website revealed that, in addition to your condominium having at least 12 owners, there are also single family homes and four other condominiums in the immediate vicinity of the project comprised of at least 115 property owners.

ANSWER:

The Code prohibits public officials from using their official position in any manner which would result in a special financial benefit, not shared with similarly situated members of the general public, to certain persons or entities, including to themselves.¹ Similarly, the Code also prohibits public officials from voting on an issue or participating in any matter coming before their board which would result in a special financial benefit to themselves.²

Whether a matter rises to the level of a prohibited conflict of interest depends on whether the official will receive any special financial benefit. The COE has previously opined that "financial benefit" constitutes economic gain or loss.³ In evaluating conflict of interest under the Code, the COE considers the number

¹ Section 2-443(a), *Misuse of official position or employment.*

² Section 2-443(c), *Disclosure of voting conflicts.*

³ RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes either a private gain or loss).

of persons who stand to gain or lose financially from a decision and whether the gain or loss is remote and speculative. As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain into a gain or loss shared with similarly situated members of the general public.⁴ Therefore, the determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public turns on the size of the class of persons who stand to benefit from the measure.⁵ Where the size of the class is large, a prohibited financial gain would result only if there are circumstances unique to the official that would enable his or her property to benefit more than the other property owners within the class. However, where the class of persons who stand to gain or lose from a decision is small, it is more likely that an official will have a conflict.⁶ The general line drawn by the COE, and by the Florida Commission on Ethics, is that no voting conflict is present in situations where the interest of the public official involves 1% or less of the class, in other words, where 100 or more persons are affected.⁷ While the "1% Rule" may be an arbitrary cutoff point, it provides certainty and guidance in an area of the law that otherwise lacks clarity.

Here, the area in the immediate vicinity of the Gulfstream Hotel consists of approximately 115 property owners. Thus, your interest in the area is less than one percent. Further, there is nothing in the facts that currently show that the location of your property provides a unique circumstance wherein your personal gain or loss by this vote would exceed significantly that of other property owners in the immediate vicinity of the Gulfstream Hotel. Therefore, because the economic benefit or loss from the Gulfstream Hotel project affects a class large enough so as to remove any prohibited individual financial benefit, you are not prohibited from voting on or participating in discussions on the renovation and new construction plans for the hotel.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a) and §2-443(c) 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:
- (1) Himself or herself;
- (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).

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

⁴ Id.

⁵ RQO 14-036

⁶ CEO 92-37 (two percent or eight percent of the property to be affected is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law).

⁷ CEO 78-96; CEO 84-80; CEO 87-18; CEO 87-95; CEO 92-52; CEO 93-12

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,



Christie E. Kelley
Executive Director

CEK/gal